(The Guide - a.g. – b.v. - 9-12-'15)
work in progress

THE GUIDE FOR THE PERPLEXED

ENTERING THE MAZE

OF

GENETIC RESOURCES,

TRADITIONAL KNOWLEDGE,

AND FOLKLORE

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geneva

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"J'écrirai ici mes pensées sans ordre, et non pas peut-être dans une confusion sans dessein: c'est le véritable ordre, et qui marquera toujours mon objet par le désordre même. Je ferais trop d'honneur à mon sujet, si je le traitais avec ordre, puisque je veux montrer qu'il en est incapable."

Pascal: Pensée, no.373 (1669)

["I shall here write my thoughts without order, and not perhaps in unintentional confusion; that is true order, which will always indicate my object by its very disorder. I should do too much honour to my subject, if I treated it with order, since I want to show that it is incapable of it."]

"En somme, le propre de ce livre est de ne pas avoir de sujet; restreint d'abord à l'étude d'un mythe, il doit, pour y parvenir incomplètement, s'assimiler la matière de deux cents. Le souci qui l'inspire de se cantonner dans une région géographique et culturelle bien délimitée n'évite pas que, de temps à autre, il ne prenne l'allure d'un traité de mythologie générale. Il n'a pas de commencement, puisqu'il se fût développé de manière analogue si son point de départ eut été pris ailleurs; et il n'a pas davantage de fin, car de nombreux problèmes n'y sont que sommairement traités, et d'autres tout juste mis en place dans l'attente d'un meilleur sort ... Le savant n'est pas l'homme qui fournit les vraies réponses; c'est celui qui pose les vrais questions."

Lévi-Strauss: Mythologiques,I: Le cru et le cuit, p.12, (1964)

["The character of this book is that it has no subject; confined initially to the study of a single myth, to manage that, even incompletely, requires it to absorb the content of some two hundred. Despite the concern which leads it to stay within strictly defined regional and cultural boundaries, at times it behaves like a general treatise on mythology. It has no beginning, for it would have evolved in the same way, even if its starting point had been taken elsewhere; nor has it any end, for many problems get only a very brief treatment, while others barely figure but hope for a better fate … The *savant* is not the person who supplies the right answers, but the one who asks the right questions".]

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Chapter 0 - Introduction to the Guide

To our readers/fellow-travellers:

- we want to help you, entering and running through a vast Labyrinth, the huge and ill defined Genetic Resources and Traditional Knowledge and Folklore (GRTKF) space (the Maze, in what follows, for short), to find a useful and interesting exploratory path throughout it, and to find a satisfactory way out of it, at the end;

- the trip that we propose is not of the kind: 'you will find here everything you always wanted to know about ...'; it will not be a easy, non contradictory, self-satisfactory, satisfying trip; we shall go a little rambling, back and forth, trough sidelines; letting ourselves often captured by curiosity, surprise, wonder; ready to laugh - mostly on ourselves - and sometimes scream of indignation;

- we hope you (and we) shall not come out unscathed

As for us:

We plunged unexpectedly into the Maze a few years ago, when we were following a more or less twisted path while researching on 'Intellectual property and access to medicines' (which led to the publication of Onori et al (2006)) and later on 'Development and health in poor countries; Role of International Organisations and of Switzerland' (which led to the publication of Briand et al (2010)). It was while exploring the Maze (and with no guide!) that we found that the main force behind Big Pharma's power and inside the interplay between 'intellectual property rights' and 'access to essential drugs' was not - as we did expect - into the decisional frames of WHO or even WTO (because of TRIPS), but of WIPO and UPOV, that we had previously ignored.

This led us to the exploration of Traditional Medical Knowledge (TMK), as an ingredient intensely present when health in poor countries was discussed, and then naturally we went from TMK to TK, and then from TK to the whole GRTKF WIPO's program!

From 2011 to the present, we have been regularly invited by WIPO's Headquarters in Geneva, as 'observers', to the general meetings of the Intergovernmental Committee on Genetic Resources, Intellectual Property and Folklore, for which we are most thankful.

We have to start, as several WHO's publications do, from:

"All reasonable precautions have been taken [by us] to verify the information contained in this publication. However, the published material is being distributed without warranty of any kind, either expressed or implied. The responsibility for the interpretation and use of the material lies with the reader. In no event shall [we] be liable for damages arising from its use".

A few things more on what we try to do consistently, or on what we consistently try not to do:

- we have left always the quotations - in particular, in the many cards that, as you will see, interleave the text - in their original language

- we have tried, when possible, to avoid the standard, academic (aha! this is just what we try not to be, 'academic'!) quotes, sort of: "see also Kompiolvuowsky (1739)"; when we quote, we try to give some juice, at least a smell of what the author wanted to say; and, in the cards, we leave in the original language

- you will not find, either in the Maze or in this Guide, only purely, academic, scholarly papers; most of the items we shall visit are, of course, in the Maze, but some of them are just slag from our school days, bits of newspapers, scraps of advertisements, 'ossi di seppia', ...; please don't be afraid of them; sometimes, they can be wiser than the most academic paper

- as there have been several different choices for 'traditional medical practices', we have used only TMK (and consequently changed to TMK the TM, TM/CAM, ... in the quoted texts) - but we have left TCM, for Traditional Chinese Medicine, because of the added geographic information; as well as CAM and T&CM, for Complementary Alternative Medicine and Traditional & Complementary Medicine, because WHO prefers to to give slightly different meanings to K and A.

We do not want to imply that the only way to visit and to explore the Maze is ours; there are quite a number of comprehensive publications, treating all or at least a large number of topics typical of the GRTKF space, as for instance:

- B.Bachner: Intellectual property rights and China; The modernization of traditional knowledge. Utrecht: Eleven, 2009.

- General guidelines for methodologies on research and evaluation of traditional medicine. Geneva: WHO, 2000.

- Silke von Lewinski (ed.): Indigenous heritage and intellectual property; Genetic resources, traditional knowledge and folklore. Austin: Wolters Kluwer, 2008.

- R.N.Nwabueze: Biotechnology and the challenge of property; Property rights in dead bodies, body parts and genetic information. Burlington: Ashgate, 2007.

- D.A.Posey and G.Dutfield: Beyond intellectual property; Toward traditional resource rights for Indigenous peoples and local communities. Ottawa: International Development Research Centre, 1996.

- Tzen Wong and G.Dutfield (eds.): Intellectual property and human development; Current trends and future scenarios. Cambridge (UK): Cambridge UP, 2011.

but we immodestly believe that the exploratory trip that we propose will be more amusing and, being less serious, more intensely useful.

And now we are ready to plunge into the Maze:

- first, who are 'We'? who are 'They'?

Please go to the card Kipling (1904):

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0. ['We' and 'They'; card-Kipling (1904)]

We and They

Father, Mother, and Me
Sister and Auntie say
All the people like us are We,
And every one else is They.

And They live over the sea,
While We live over the way,
But - would you believe it? - They look upon We
As only a sort of They!

We eat pork and beef
With cow-horn-handled knives.
They who gobble Their rice off a leaf,
Are horrified out of Their lives;

And They who live up a tree,
And feast on grubs and clay,
(Isn't it scandalous?) look upon We
As a simply disgusting They!

We shoot birds with a gun.
They stick lions with spears.
Their full-dress is un-.
We dress up to Our ears.

They like Their friends for tea.
We like Our friends to stay;
And, after all that, They look upon We
As an utterly ignorant They!

We eat kitcheny food.
We have doors that latch.
They drink milk or blood,
Under an open thatch.

We have Doctors to fee.
They have Wizards to pay.
And (impudent heathen!) They look upon We
As a quite impossible They!

All good people agree,
And all good people say,
All nice people, like Us, are We
And every one else is They:

But if you cross over the sea,
Instead of over the way,
You may end by (think of it!) looking on We
As only a sort of They!

R.Kipling (1904)

Is it clear that we (namely, the authors of this Guide and perhaps many of our readers/fellow-travellers) are 'We'.

When we read: "The region is known for having some of the world's most stringent laws on abortion, particularly Chile, El Salvador and Nicaragua, which have bans on the procedure", we react, and hope for change: then we are 'We' - we are not smoothing down our reaction by thinking: 'but they ['They'!] could have a number of sound religious, ritual, mystical reasons for this, reasons that we should have to try and understand or, at least, respect'. Even if we are no better; we too, in our world, can read: "After Margaret Thatcher died in April, a spirit medium in Japan interviewed her and drew forth her advice on fixing the economy" (Graeme Wood, on the International Herald Tribune, June 8, 2013, p.7); but then we smile, and cannot help but thinking: 'another swindler, even in Japan!' (as of course we put Japan people, with us, among 'We')

We are aware that we (as 'We') should learn and adapt our reactions to a better, more mature, more comprehensive way of dealing with the presumed differences between 'We' and 'They'. To use an almost forgotten, if perhaps more and more necessary word: a more 'dialectical' way of thinking; becoming capable of integrating some of 'Their' life experience and historical experience with 'Ours'. But those readers/fellow-travellers that will follow us in the Maze will find that the task is enormous, as bad faith and economical interests both sides seem to dominate the landscape, and a 'dialectical' approach, if necessary, is extreemely hard to elaborate.

But when we find in the Maze, in its TMK sub-space:

"It is difficult to trace a line of demarcation between scientific knowledge and magic. This stems from the importance, in a traditional oral culture such as that of the Yoruba, given to the notion of an incantation (*ofò*) spoken during the preparation or application of the medicinal formulae (*oògùn*). ... It is the knowledge of the *ofò* which is essential, as it contains the 'power-to-alter' the formula's pharmacological effects." Fatumbi-Verger (1995), passim,

then, we are supposed not to smile, and surely not to think of 'swindlers', but on the contrary to bow to some sort of TMK that could deserve some sort of 'sui generis' (see Ch.6 below) Intellectual Property Rights (IPRs for short) for some sort of protection and promotion; only because Yoruba people are 'They'!

If you think seriously about this split world of 'We' and 'They' we live in, and we think in, then you will better understand and accept the deeply pertinent definition by Rahamatian of the whole GRTKF WIPO program, as a program tarnished by neo-colonial thinking, or as a 'neo-colonial device'; please go to the card Rahmatian (2009):

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0. [critical approaches to the WIPO GRTKF projet; card-Rahmatian (2009)]

"Article 7 of TRIPS claims that the protection and enforcement of intellectual property rights (especially patents) are important prerequisites to 'the promotion of technological innovation and to the transfer and dissemination of technology. This is rather astonishing and tends to suggest a contradiction in terms. As intellectual property rights are property rights that confer exclusive private rights to intellectual resources and the knowledge they contain, the promotion and transfer of technological innovation is solely dependent on the willingness of the intellectual property rights owner to part with these resources, and if there is an imbalance between intellectual property-producers countries and countries that are mostly users of intellectual property, the economically powerful intellectual property producers, strengthened by the safeguard of their intellectual property rights, will dictate the terms of the transfer. (p.52)

Another potentially neo-colonial device [after TRIPS] is the attempt to turn back the clock and seeking the protection of a cultural past of indigenous communities against future economic and cultural development. This is really the essence of the idea of the 'protection of traditional cultural expressions', in most cases by no means an ill-spirited concept, but misguided. It is a modern version of the construction of otherness, as it is known from colonial times, although currently not directed at defining the 'other' also as inferior. But once this intellectual segregation and stereotyping of a traditional 'character' and culture has been made, it is difficult to see why that next step should not follow suit. Furthermore, this 'protection' of 'tradition' against exploitation serves Western economic interests far more than one would assume. ... This definition admittedly originates from Western thinking, but so does any protection scheme.

The conventional argument is that traditional cultural expressions form the basis of an indigenous community's cultural identity. ... Traditional cultural expressions or expressions of 'folklore' (these terms seem largely interchangeable) are increasingly in danger of being commercially exploited by Western businesses on a global scale. ... The problem with this approach is, high-minded as it may often be, that in the context of artistic expressions any legally enforceable protection creates the artistic 'tradition' it purports to safeguard. (p.60)

Creative movements are frozen into an artificial static tradition through their protection, and artefacts that apparently embody this tradition are regarded as 'authentic' and such that 'must be salvaged'. ... These ethnic communities often live in reserves. The indigenous rulers would be given a power that they did not originally have and that they would be able to use against the actual interests of individual members of the community. (p.62)

This idea [the protection of the 'tradition'] reflects colonial features. The protection of the 'tradition' (essentially a Western construct) in fact creates this tradition and serves Western interests, and is to be administered by organs of the indigenous community in a kind of indirect rule." (p.64)

Rahmatian (2009), passim

- second, what shall we do with the innumerable 'mantras' that we shall encounter?

What we intend by 'mantra' is not (exactly) what the Oxford Dictionary would approve of: namely "from Skr.: 'an instrument of thought' "; but we shall better define it by some examples coming not only from the Maze, but also from our everyday world, the media, politics (it is enough to think of 'democracy'!) :

Found in our everyday world:

- **'the international community'**: "**The *international community*** is a phrase used in international relations in reference to themselves by the United States of America and its allies in the widest sense. It does not refer literally to all peoples, cultures and governments of the world." Wikipedia, May 2013

'the international community', so frequently used to artificially involve all of us into shadowy, if not criminal, enterprises, is a 'mantra', an empty box; we are surely not intended to be inside

- **'the international understanding'**: a large poster, at the Geneva UN Library, states: "Library of the UN Office at Geneva: Instrument of **international understanding**"

all this emphasis, about a Library where, by carefully exploring its complete and accurate Archives, you could easily find the most honest (legal?) way to declare war

- **'ancestral'**: "Des mouvements **ancestraux** et naturels, pour un sport tout neuf [Cross-Fit] qui a déjà conquis les Etats Unis ..." Le Temps (Geneva), August 10, 2013, p.19

clearly, even scratching your nose could be defined as 'un mouvement ancestral', so what? ...

And now, found in the Maze:

- 'holism', 'holistic': "Comme la plupart des pratiquants des systèmes de santé indigènes indiens, tel l'ayurveda ou le yoga, les *dais* [local mid-wives] ont une approche **holistique**. La chercheuse américaine [Janet Chawla] souligne que pour ces villageoises, la spiritualité et la médecine, ainsi que le corps et l'esprit, ne sont pas séparés." Dussault (2013)

"Western researchers must accept the interconnections of African life. African beliefs must be approached with a **holistic** point of view. For example, plants cannot be viewed in isolation from their interconnection with the spirit world or from their connection with the wild as well as the domestic animal world." Kiggundu (2007)

'holism' will be frequently encountered in our trip around the Maze; a 'mantra' that you can appreciatively apply to everything you like, and of

which you can regretfully deprecate the absence in everything you dislike; an empty box of merely rhetorical use

- 'ancestral': "Members of the Tap Pilam Coahuiltecan Nation — who consider themselves the descendants of those ancient Texans — have, in turn, been learning about **ancestral** foods and incorporating them into their diet to counter the high rate of diabetes in their population." S.A. (2012)

"Chinchero [a Peruvian region] a gardé les traditions andines **ancestrales**, comme la récolte de la pomme de terre." Le Matin (Genève), 13 juillet 2013, under a normal photo of a normal Peruvian peasant quite normally gathering normal potatoes in his field

'**ancestral**' is a 'mantra' that will magically transform new traditions into century-old, thousand-years old relicts of a precious past; we shall encounter it while discussing at length, in what follows, the fascinating sub-space of the 'invented traditions', proliferating freely into the Maze under the financial promises of the GRTKF programs

- 'the African culture':
(but it could be 'oriental', 'aboriginal', 'white' 'Western' and so on)

a very interesting and thoughtful reaction to this kind of silly mantra:

"The number of times I have heard people say **'in African culture we don't** ...' has made me gag. The last time I looked there were 54 countries and more than a billion people on this continent. How amazing that we all have one culture, this 'African culture' that many have banged on about this past week. One of the more popular myths, peddled by those who apparently do not want the media to report on Nelson Mandela's health, is that in African culture 'we don't talk about someone's death' while they are still alive. In fact, it seems as if we don't talk about death at all. Apparently, we also don't talk about a person's illness. What utter rubbish. ... It seems to be in vogue, right now, to imply that in this nebulous 'African culture' we keep things hidden and we do not talk. We are people of the shadows, of whispers and bowed heads and gossip. Well, let me tell you about the African culture that I admire. It is the culture of Mandela who, amid the silence and denial of Aids and HIV in the mid 2000s, stood up and courageously said: 'My son died of Aids.' "
Malala (2013)

- 'symbols, symbolizes ... ': "Some facts about the WIPO headquarters building: The wall fountain in the lobby – 6 meters high, 11 meters wide – **symbolizes** the emergence of life. Flowing ribbons of multicolored marble set in the floor represent human ingenuity and creativity and culminate in a golden sunburst mirroring the gilded cupola above." *www.wipo.int*

(we note with a surprised pleasure that, to WIPO, the **symbolic** connection of 'golden' and 'gilded' with 'gold', 'money', 'profit', ... has escaped!)

"The **symbols** and designs of indigenous peoples have been used in commercial products without their permission and without financial compensation." Wiist (2011)

"The Law aimed to protect collective IP rights and the TK of Indigenous peoples in their creations, such as inventions, designs, drawings and innovations contained in images, figures, **symbols**, graphs, petroglyphs and other details, in addition to the cultural elements of their history, music, art and traditional artistic expressions able to be used commercially." WIPO-Report-ic-12

(while, on the contrary, the **symbolic** connection of **symbols** with **'financial compensation'** has not escaped some potential TK stakeholders!)

Learn to identify the 'mantras' you encounter as empty boxes
- do not even try to open them: there is nothing inside

(at the end of our trip, we shall have perhaps reasons to modify slightly our definition of a 'mantra')

- third: what is the K in TK?

Of course, we know that K is meant to mean: 'knowledge'; but is not this interpretation of the K, used by tradition in TK: Traditional Knowledge as 'knowledge', a misnomer? can we motivate in any reasonable way this use of the term: 'knowledge' in this context?; why not 'belief' ? why not 'opinion' ? why not 'custom' ?)

We think that a careful reading of the next 4 cards could help:

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0. [belief, explanation, knowledge; card-Plato]

[201c] Theaetetus: Oh yes, I remember now, Socrates, having heard someone make the distinction, but I had forgotten it. He said that knowledge was true opinion accompanied by reason, [201d] but that unreasoning true opinion was outside of the sphere of knowledge; and matters of which there is not a rational explanation are unknowable — yes, that is what he called them — and those of which there is are knowable.

Socrates: I am glad you mentioned that. But tell us how he distinguished between the knowable and the unknowable, that we may see whether the accounts that you and I have heard agree.

Theaetetus: But I do not know whether I can think it out; but if someone else were to make the statement of it, I think I could follow.

Socrates: Listen then, while I relate it to you — 'a dream for a dream'. I in turn [201e] used to imagine that I heard certain persons say that the primary elements of which we and all else are composed admit of no rational explanation; for each alone by itself can only be named, and no qualification can be added, ...

[207a] Socrates: As, for example, Hesiod [WD, 456], speaking of a wagon, says, 'a hundred pieces of wood in a wagon'. Now I could not name the pieces, nor, I fancy, could you; but if we were asked what a wagon is, we should be satisfied if we could say: 'wheels, axle, body, rims, yoke'.

Theaetetus: Certainly.

Socrates: But he, perhaps, would think we were ridiculous, just as he would if, on being asked about your name, we should reply by telling the syllables, [207b] holding a right opinion and expressing correctly what we have to say, but should think we were grammarians and as such both possessed and were expressing as grammarians would the rational explanation of the name Theaetetus. He would say that it is impossible for anyone to give a rational explanation of anything with knowledge, until he gives a complete enumeration of the elements, combined with true opinion. That, I believe, is what was said before.

Theaetetus: Yes, it was.

Socrates So, too, he would say that we have right opinion about a wagon, but that he, who can give an account of its essential nature [207c] in terms of those one hundred parts, has by this addition added rational explanation to true opinion and has acquired technical knowledge of the essential nature of a wagon, in place of mere opinion, by describing the whole in terms of its elements.

Theaetetus: Do you agree to that, Socrates?

Socrates: If you, my friend, agree to it and accept the view that orderly description in terms of its elements is a rational account of anything, but that description in terms of syllables or still larger units is irrational.

Plato: Theaetetus, [201], [207]

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0. [belief, explanation, knowledge; card-Sol Tax et al (1960)]

- "Huxley: I think we have to believe that animals do perceive some difference of quality in colours, for instance.

Gerard: But do you call this a belief, or do you call it a fact?

Huxley: I think we have to believe that it is a fact, as we have to do with many other scientific conclusions."

Sol Tax et al (1960), p.187

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0. [belief, explanation, knowledge; card-Engel (2012)]

- "On dit que nous sommes dans la 'société de la connaissance', bien que manifestement tout le monde n'y ait pas accès. On parle aussi de droit au savoir, bien que tout le monde ne puisse pas l'exercer. Mais qu'est-ce que le savoir et pourquoi nous importe-t-il? Platon a donné la définition canonique: le savoir, c'est l'opinion vraie accompagnée de raison. On peut bien avoir des croyances vraies, mais si on les obtient par hasard et si l'on est incapable de les justifier, on ne sait pas. Le savoir n'existe et n'a e valeur que s'il est enraciné dans l'esprit et permet d'acquérir d'autres savoirs. ...

De plus en plus, on appelle 'connaissance' de simples opinions vraies ou des 'informations', comme l'indiquent des termes tels que 'gestion des connaissances' ou 'traitement des connaissances'. Une conception light du savoir selon laquelle il suffit que de l'information 'circule' tend ainsi de plus en plus à se substituer à la conception classique. ...

Que le savoir soit devenu, même chez les scientifiques, l'opinion, que les réseaux et les hits sur Google deviennent plus importants que l'activité de critique et de discussion semblent à beaucoup d'excellentes choses."

Engel (2012)

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0. [doubt, belief, certainty, and knowledge; card-Wittgenstein (1969)]

- "The truth of my statements is the test of my understanding of these statements. |r.80)

The truth of certain empirical propositions belongs to our frame of reference. (nr.83)

'I know' has a primitive meaning similar to and related to 'I see'. And 'I knew he was in the room, but he wasn't in the room' is like 'I saw him in the room, but he wasn't there'. 'I know' is supposed to express a relation, not between me and the sense of a proposition (like 'I believe') but between me and a fact. (nr.90)

In general I take as true what is found in text-books, of geography for example. Why? I say: All these factors have been confirmed a hundred times over. But how do I know that? What is my evidence for it? I have a world picture. Is it true or false? Above all it is the substratum of all my enquiring and asserting. The propositions describing it are not all subject to testing. (nr.162)

What I know, I believe. (nr.177)

It would be correct to say: 'I believe ...' has subjective truth; but 'I know ...' not. (nr.179)

If we ever do act with certainty on the strength of belief, should we wonder that there is much we cannot doubt? (nr.331)

A child must learn the use of colour before it can ask for the name of a colour. (nr.548)

If someone believes something, we needn't always be able to answer the question 'why he believes it'; but if he knows something, then the question 'how does he know?' must be capable of being answered." (nr.550)

Wittgenstein (1969), passim

Unless we come out of this short side-trip more confused than when we entered; but our scope, during our proposed trip, was not that of making things, necessarily, less confused for you (and us); but rather to learn, and accept their confusion as an essential, un-separable part of their essence.

Anyway, we could at least keep in our mind, as a lesson from this short side-trip, the luminous words: **"that knowledge is true opinion accompanied by reason"**;

or, and of this we should need the continuous presence when confronted with the diverse types of 'knowledge' encountered in the Maze: **"if he knows something, then the question 'how does he know?' must be capable of being answered."**

We shall go now to a more detailed analysis and presentation - not to be unduly surprised - of the main sub-spaces of the Maze; our path will follow some (sometimes devious) lines in order to explore which are old problems, which are old problems disguised as new, which are new problems disguised as old ('ancestral' is the 'mantra' word in this context). These different sub-spaces are evidently not strictly separated and independent, being rather inter-locked in what we would like to define and describe as a dialectical way. But, much as we believe in, and love, a 'dialectical' approach to social and cognitive problems and challenges, we shall in what follows try to be careful enough not to transform this beautiful and useful word (and concept) into a new 'mantra'.

A few words on the birth of WIPO TK program?

"The 45 Adopted Recommendations under the WIPO Development Agenda (2007) - WIPO (2007)

* Recommendations with an asterisk were identified by the 2007 General Assembly for immediate implementation

* 18. "To urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments".

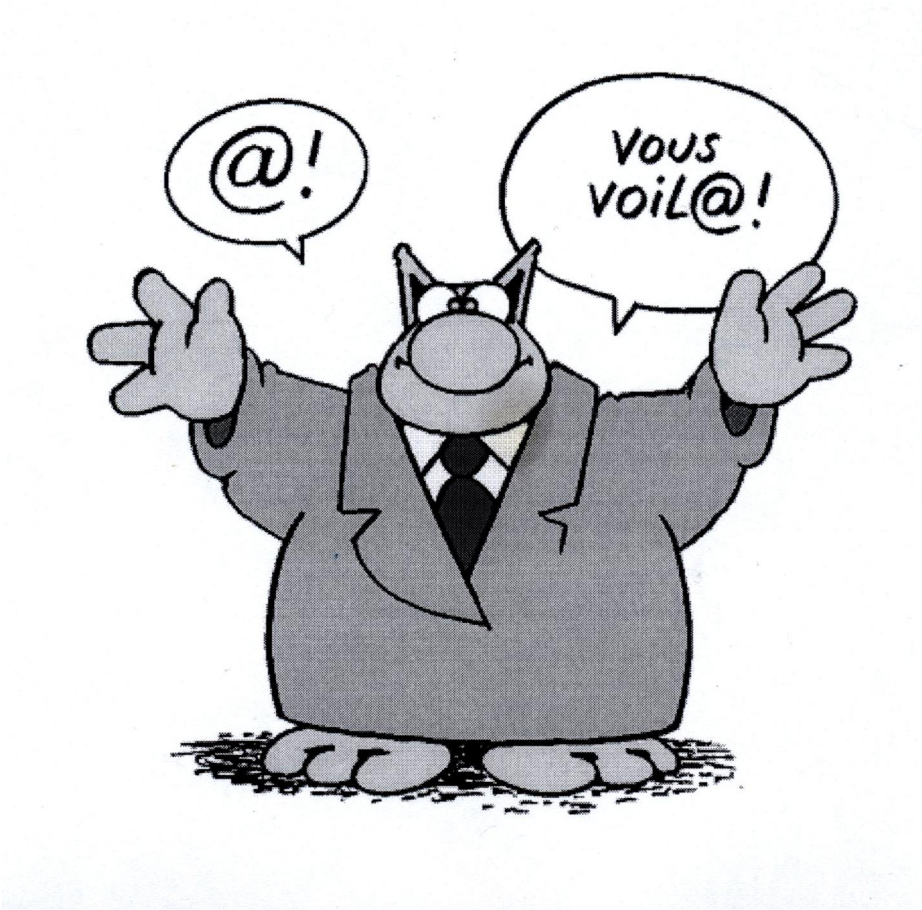
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add 0: Areas of knowledge (2014)

Lévi-Strauss (1962)

Chapter 1

TO OUR DEAR @READERS/@FELLOW-TRAVELLERS!



Philippe Geluck

Chapter 1 - The present situation: IPRs on one side, TK on the other side

Introduction to Chapter 1

Our advice is to start our exploratory trip throughout the Maze by its easiest, most classic, historical gate: that leading to the clearly defined sub-space concerning IPRs: the Intellectual Property Rights. Even if we shall rapidly find that the atmosphere there is not as transparent, as tranquil, as friendly as we would have expected; and the borders with the adjoining sub-spaces not as clearly defined as we would have predicted.

In particular, the coexistence of two realms, namely IPRs and GRTKF, seems particularly uneasy, IPRs being irreparably tainted by old, unpleasant remembrances of past imperialist and colonial neglect and contempt towards TK (in particular, towards TMK). But at the same time, IPRs of some form are just what has been used to allure and corrupt TK stakeholders of all sort - from indigenous communities to peasants groups in the wilderness to shamans in the forests - by a glimpse of possible money coming trough.

More on this, when we come nearer to the spaces that IPRs and GRTKF uneasily share.

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add: Intr.1 Lévi-Strauss (1962)

Section 1.a - Generalities on IPRs (TRIPS)

Strange as it seems to say, such an old and respected social institution as IPRs seems to sit, nowadays, on shaky grounds; we get a hint of this, if experts in the field can write:

"Thanks to Peter Yu for his indefatigable enthusiasm for mapping the sometimes surreal terrain of intellectual property law in the twenty-first century."
(Aoki et al, Michigan State Law Review, vol.35, 2007)

So we are warned, and try and proceed cautiously, step by step:

a - who and what can be defined as an 'inventor'?

Who and what can be defined as 'susceptible of having a patent granted'? : a person, a community, an NGO, a State?; we have probably never thought about it, but go, for instance, to next card:

1.a [IPRs: who has the right to be an 'inventor'?; card-patents (1861)]

"Patents

From inquiries repeatedly made of us as to who are the legitimate owners of inventions issued under various circumstances, a few items of information under this head will interest our inventor readers at least. In regard to inventions made by slaves, it has been the practice of the Patent Office to reject such applications, as they are considered legally incompetent alike to receive the patent and to transfer their interest to others. In reference to free colored men, we believe them also to be incompetent to receive a patent, as under the United States Laws they are not regarded as citizens, and could not therefore defend a patent against infringers in the United States courts. [Scientific American (1861)] "

Patents (1861)

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to learn that not only slaves, but also "free colored men" were judged as "incompetent to receive a patent" by the USA Patent Office, as late as 1861. We can only extrapolate to what was the sort of indigenous people in the colonies of the imperialist powers, quite independently on the knowledge (TK and/or personal knowledge) of which they were endowed.

b - what can be defined as 'susceptible of being owned'?

An object, a concept, a recipe, a project, a melody ...?

And what about 'human body' or 'human body parts'?; we have probably never thought about it, but this is one of the paths (one of several conflicting paths) that can lead us to a region of potential contrasts between IPRs and TK and Rituals.

Remigious N.Nwabueze has written 370 pages on this theme:
"Questions arise as to the relevance and implications of property concepts or new forms of technology and innovation utilizing human body parts, biological raw materials and products. ... The use of the concept of property in these areas is not without controversy. Within certain cultures and legal systems, people may be offended by the application of property concepts to the human body and parts. Religious, spiritual, economic and technological considerations largely influence discussions and debate on the application of property laws to the human body. ... Traditional knowledge also poses challenges to the law of property. Traditional knowledge, including folklore, folk agriculture and folk medicine, is generally regarded as being outside the contemplation of conventional property and intellectual property laws."
Nwabueze (2007), Introduction

To partially answer points a. and b., and as the domain of IPRs is, at present, strongly dominated by the rules and prescriptions dictated by the TRIPS (Trade Related Intellectual Property rigthS) Agreement, in the domain of the WTO (World Trade Organisation), we have prepared a card on

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1.a [IPRs and patentability; card-TRIPS (1994)]

"AGREEMENT ON

'TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS' (TRIPS), 1994

...

Article 27 - Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement."

TRIPS (1994)

For what regards 'non-patentability', everything was made inextricably complicated by the introduction of an extremely difficult definition - for its semantic and for its interpretation: that of 'essentially biological process' (see, for an analysis in depth, Sterckx, 2010); we find this baffling expression used again in EPC (2007):

1.a [IPRs and patentability; card-EPC (2007)]

"European Patent Convention, EPC (2007):

Article 52 - Patentable inventions

(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.
(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
(a) discoveries, scientific theories and mathematical methods;
(b) aesthetic creations;
(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers. ...

Article 53 - Exceptions to patentability

European patents shall not be granted in respect of:
(a) inventions the commercial exploitation of which would be contrary to 'ordre public' or morality; such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;
(b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;
(c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

Article 54 - Novelty

(1) An invention shall be considered to be new if it does not form part of the state of the art.
(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
(3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.
(4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art.
(5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in a method referred to in Article 53(c), provided that such use is not comprised in the state of the art."

EPC (2007)
documents.epo.org/projects/babylon/eponet.nsf/0/7bacb229e032863dc12577ec004ada98/$FILE/EPC_14th_edition.pdf

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- To clarify the ambiguities on 'patentability' vs 'non-patentability', something new and precious arrived recently (13 June 2013):

WASHINGTON — Reversing decades of federal patent awards, the U.S. Supreme Court on Thursday unanimously ruled that human genes and the information they encode are not patent-eligible. The ruling invalidated controversial patents held by Myriad Genetics Inc. on two genes whose mutations dramatically increase the risk of hereditary breast and ovarian cancer — the so-called BRCA1 and BRCA2 genes. Myriad discovered the exact location and sequence of the two genes, which enabled it to develop diagnostic tests for detecting the mutations and assessing a person's cancer risk. The company's patents gave it the exclusive right to do research and diagnostic testing of those genes and also to synthetically create BRCA DNA, known as complementary or cDNA.

The justices' decision in *Association for Molecular Pathology v. Myriad Genetics* surprised few in the patent law field. Following oral arguments in April, the court appeared to be leaning favorably towards an argument presented by Solicitor General Donald Verrilli Jr. Breaking with the position held by the U.S. Patent and Trademark Office, Verrilli urged the justices to hold that isolated, naturally occurring DNA is not patent-eligible, but that laboratory-created, synthetic DNA is.

Justice Clarence Thomas, writing for the court, said the justices 'have long held' that federal patent law contains an important, implicit exception: Laws of nature, natural phenomena and abstract ideas are not patentable. 'It is undisputed that Myriad did not create or alter any of the genetic information encoded in the BRCA1 and BRCA2 genes,' he wrote. 'The location and order of the nucleotides existed in nature before Myriad found them. Nor did Myriad create or alter the genetic structure of DNA.' Separating the gene from its surrounding genetic material is not an act of invention, he wrote, adding, 'Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy' the patent inquiry.

Myriad's patent claims, Thomas wrote, focus on the genetic information encoded in the BRCA1 and BRCA2 genes. 'We hold that a naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated,' he wrote. The court also ruled that cDNA — synthetic or complementary DNA — is patent-eligible because it is not naturally occurring. The lab technician, Thomas said, 'unquestionably' creates something new when cDNA is made.

'cDNA retains the naturally occurring exons of DNA, but it is distinct from the DNA from which it was derived,' Thomas wrote."
from Marcia Coyle, chief Washington correspondent with The National Law Journal, a Recorder affiliate.

To show however the complexity of the 'brain-storms' engendered by the above mentioned ambiguity, it can be useful to read the following quotation from an European Parliament debate on the 'non-patentability' rules:

'There is an upward trend in the number of applications being made to the European Patent Office (EPO) for patents on plants derived from conventional breeding. In 2010, the EPO’s Enlarged Board of Appeal (EBoA) decided that methods used for the conventional breeding of plants are not patentable (decisions G2/07 and G1/08). The patent cases reviewed in these decisions were a patent on broccoli (EP 1069819) and one on tomatoes (EP 1211926), both derived from conventional breeding. These patents claimed

the process for breeding as well as the seeds, plants and edible parts of the plants. In decision G1/08, the EBoA ruled that a non-microbiological process for the production of plants which contains or consists of the steps of sexually crossing the whole genomes of plants and of subsequently selecting plants is in principle excluded from patentability as being 'essentially biological' in the sense of Article 53b of the European Patent Convention (EPC) and Article 4(b) of Directive 98/44/EC on the legal protection of biotechnological inventions.'
European Parliament, Parliamentary questions, Question for oral answer 19 April 2012

If we were better experts on the deep secrecies of 'patenting the living', we could better enjoy the fields (both in their physical and their metaphoric sense) of broccoli and tomatoes; by following, for instance, Sterckx (2010) in his in depth presentation of the case of 'Plant Bioscience (U.K.) broccoli having elevated levels of glucosinolates'; or that of 'Israeli tomato plants that produce tomatoes having reduced fruit water content'. But we shall only glance at them, and proceed further.

- where IPRs meets TK, and sometimes GRTKF

As we are already reaching the rather blurred border between the IPRs and the TK sub-spaces, we will note that 'patentability' (as well as the 'non-patentability), well defined historically and applied without apparent contradictions in the realm of industrial economy, can however lead to clashes with CRTKF sensitivity:

'Though WTO Members may limit the scope of patentability, some developing countries may worry that it could hinder investment in local bio-prospecting or research activities that may lead to patents on TMK-based products and successful commercialization. It must be borne in mind, however, that developing countries possessing TMK knowledge often lack the financial resources and the research and industrial capabilities to scientifically identify and isolate the compounds that explain the therapeutic effects of certain traditional medicines. In addition, TMK healers and local/indigenous communities generally lack the skills and resources necessary to follow the complex patent procedures and, in particular, to face the costs of registration and enforcement of IPRs both locally and abroad. Even with a wide scope of patentability, these factors seriously limit the practical utility of such an approach. ... It is conceivable, however, that - particularly in the case of codified TMK systems - some research institutions and local companies take advantage of such low standards in order to protect and commercially exploit products with already known properties. This may favor the development of a domestic industry based on TMK. The counter point is, however, that knowledge that could be publicly available would become subject to monopolistic rights, in turn reducing access to medical treatment, all that without any real contribution to the advancement of knowledge.'
Correa (2002), passim

But what TRIPs has to say about TK, if anything? Here is a short list of rather divergent evaluations, which implies that, often, you can use TRIPS to make it saying what is more convenient to you (the relevant *hermeneutics* - or 'science of the interpretation' - plays indeed a primary role in the Maze!):

"Under TRIPS, TK is not recognised as knowledge worthy of IP protection. Consequently, it is assumed that TK is in the public domain and thus freely available. It gives the impression that TK is not valuable while scientific research work carried out in laboratories is (and also adds value to TK)."
Mwangi (2007), p.283

"Traditional knowledge is an enormous challenge for the TRIPS. Many expressions of folklore and several other forms of traditional knowledge do not qualify for protection because they are too old and, therefore, in the public domain. ... There is clearly a lot of traditional material that is unfit for its very nature for protection by extant intellectual property norms. Examples include spiritual beliefs, methods of governance, languages, human remains and biological and genetic resources in their natural state, i.e. without any knowledge concerning their medicinal use."
Gervais (2003), passim

"An important TRIPS-related development with respect to the protection of TK was the 2001 Doha Ministerial Declaration of the WTO, which instructed the WTO's Council for TRIPS 'to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, ... and the protection of traditional knowledge and folklore' ".
McManis et al (2011), passim

We believe that, up to now, the most complete and inclusive analysis of the relation 'IPRs - TRIPS - TK' (even if it is an old one, relative to the fast growing body of papers and books in the Maze on the WIPO's GRTKF program) is the 1996 book by Posey and Dutfield: Beyond intellectual property; Toward traditional resource rights for Indigenous peoples and local communities. Next card can give you only a glimpse of their arguments; much as we dislike the too easy sentence: see also ... , we have to commend this book to our fellow-travellers, if they are willing to explore the theme in depth:

1.a [Is indigenous knowledge patentable?; card-Posey et al (1996)]

"Three questions now arise:

1. Can indigenous people patent their own knowledge?

A product patent cannot be obtained for a naturally occurring organism or a gene that has not been isolated. This rules out the patenting of much potentially useful indigenous knowledge relating to naturally occurring organisms. Nevertheless, some traditional medicinal or other preparations from natural substances could be regarded as patentable modifications or combinations (processes), and process patents may be obtainable for them. However, this is possible only in the case of new inventions and as long as individual people can be cited as the 'inventors'. To this extent, indigenous people may be able to patent certain amount of their own knowledge. One major obstacle is that the process of acquiring a patent, which includes payments for filing, the examination, and the grant, is expensive and time-consuming. Furthermore, the patent will need to be renewed annually. Indeed, the expense may be beyond the means of many communities.

2. Can companies obtain patents based on indigenous knowledge?

This is certainly possible. Frequently, companies have investigated useful attributes of a biological substance known to a traditional community. Although normally a product patent cannot be obtained for a naturally occurring organism, chemical, or gene, in some industrial countries patents can be obtained for one that has been altered in some way. Therefore, after isolating the active principle of a substance, the company can modify it or use it in the design of a new synthetic compound that may be more stable or less toxic than the original substance. Such an 'invention' can then be patented by the company. ...

3. What can be done if someone copies an invention without permission?

One of the biggest problems that would face an indigenous community with a legal personality that obtained a patent is the danger of others infringing the patent by copying it. The community might not know about it, and even if it finds out, legal action can be very expensive. Whereas corporations have their own lawyers and financial resources to provide effective legal support, local communities rarely have such resources or advocates. Even if a case does go to court, the company may well succeed in convincing the court that its product, use or process is sufficiently different from the original to constitute an invention".

Posey et al (1996), passim

1.a ['who owns your genes?; card-Barraclough (2013)]

"Who owns your genes? Do you own them if they are inside your body, but someone else can own them if they have been removed? Are isolated human genes man-made, patentable inventions or unpatentable products of nature?

These were the issues before the nine justices of America's highest court in Association for Molecular Pathology v Myriad Genetics earlier this year. The story of Myriad begins almost 20 years ago, when Salt Lake City-based Myriad Genetics announced it had sequenced the BRCA1 gene, a mutation that can lead to breast and ovarian cancer. Two years later, the team published the sequence for another gene correlated with hereditary breast and ovarian cancer: BRCA2. It obtained patents on both genes. Its discoveries were lucrative: in 1996 it began selling the first molecular diagnostic test for these hereditary cancers at a cost of around US$3,000 per patient.

Key biotech cases

- Diamond v Chakrabarty: In 1980, the Supreme Court of the United States ruled that a micro-organism that had been genetically modified for use in cleaning oil spills was patentable on the grounds that it did not constitute a 'product of nature '. The Court set an important precedent in the area of patentability by ruling: 'The laws of nature, physical phenomena, and abstract ideas have been held not patentable. Thus, a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter … Such discoveries are 'manifestations of . . . nature, free to all men and reserved exclusively to none'. The decision was a close-run thing, however: four justices dissented, a portent of litigation to come.
- Harvard Oncomouse: In 1984, the European Patent Office (EPO) received its first application for a patent of an animal: the genetically modified Harvard Oncomouse. Eight years later it granted a patent to the Harvard University researchers involved, a move opposed by an array of political parties, religious groups and environmental activists. The EPO ultimately upheld the patent in 2004 but ruled that it should relate to transgenic mice only, rather than all rodents.
- Prometheus Laboratories, Inc v Mayo Collaborative Services: In March 2012, the Supreme Court ruled that Prometheus' patent claims related to ways of optimizing doses of certain drugs used to treat specific conditions were invalid because they relate to a natural phenomenon. The effect of the decision was to make it harder for developers of genetic tests to obtain patent protection.
- the Myriad case: The question before the Court was whether isolated human genes are patentable. The Supreme Court's nine justices took eight weeks to answer after hearing from both sides in the dispute. What they said was this: a naturally occurring DNA segment is a product of nature and, as such, cannot be patented. In contrast, so-called complementary DNA - an artificial product designed to mirror the coding parts of genes - is eligible for patent protection because it is not naturally occurring. 'The lab technician unquestionably creates something new when cDNA is made', they said. ... Within hours, the USPTO issued a memo to its examiners instructing them to reject product claims drawn solely to naturally occurring nucleic acids, or fragments of them, whether isolated or not."

Barraclough (2013)

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add 1.a Jewell (2015)
'Statute of Anne' (1710)
Velásquez (2015)
Velásquez (2015a)
Yamanaka (2015)

Section 1.b - Generalities on TK, protection of TK, promotion of TK

We are entering at this point the most complex, confused, confusing sup-space of the Maze: TK; ideas and words - mostly words - are there flowing freely, but too often specific interests, personal prejudices, rhetorical devices and explicit bad faith cloud the atmosphere and render the interpretation of the discourse arduous.

First, a reflexion about the space that TK of all forms both held in the structuring of our knowledge systems, and hold now in our present world view:

"Technologies as social product: most of our world is known not by individual sensory experience, but by hearsay and reading, for it is the product of the pooled experience of all the members of the society, both past and present."
Singer et al (1957), p.39

In order to get some familiarity with the theme, we think we should start from something nearer to us, in space (Europe, for instance), if far from us, in time (ancient Greece and Rome, for instance), to try and be ready, later, for the so many *historiae* and arguments that belong to experiences and sensibilities far away from us, both in space and in time.

Much of our ancient systems of thought depended clearly on diffuse TK, belonging differently to different strata and classes in every society; but what access do we have today to that knowledge?

"There are, then, some have said, ... no culture-independent criteria that can be used as the basis of 'objective' judgements concerning other societies, and a society can only by understood from 'within': that is by the actors themselves, not by outside observers. However, it was appreciated early in this debate that many of the points that had been expressed as difficulties concerning the understanding of one society by another apply also to the mutual understanding of different groups within the same society even when those groups use the same natural language. ... [For Greece] the evidence suffers from two major shortcomings. First we are dealing, in the mains, with literary texts. The effect of this limitation is clear: in discussing the ancient world we must forego any extravagant ambition to reconstruct the beliefs, attitudes and practices of ordinary Greeks *as such*, and confine ourselves to largely to analysing those beliefs *as they are represented by particular individuals or groups.* ... Secondly, the evidence is fragmentary and uneven, particular individuals and groups being much better represented in our extant sources than others. ... The symbolic nature of some of the recommendations that are ascribed to the 'purifiers' in *On the Sacred Disease* [a Hippocratic text] - for instance, the prohibition against wearing back or against crossing the hands or legs - is clear enough."
Lloyd (1979), passim

"*Les travaux et les jours* d'Hésiode et l'*Économique* de Xénophon posent problème quant à leur fonction, la transmission du savoir agricole. Ces deux textes transcrivent, en effet, dans un langage savant un savoir concernant la culture céréalière avec de brefs aperçus sur la viticulture ou sur l'arboriculture. ... La formulation de ces savoirs est la plus succincte et parfois allusive: les lecteurs de l'Antiquité n'ont rien appris quant à l'art agricole."
Kanelopoulos (1998), p.133

"Quelles sont, dans chaque milieu social et à chaque époque, les connaissances agronomiques qui font l'objet d'une élaboration spécifique? Par qui cette élaboration est-elle faite, pour qui et dans quel but? Quelles sont au contraire les connaissances qu'on passe sous silence et pourquoi?"
Sigaut (1998), p.129

The problems associated with the programs of 'protection' of TK have been discussed, in a very limited, specific geographical situation (Peru) but with serious, academic rigour, by M.Galvin in a doctoral thesis at Geneva University - see Galvin (2004); it helps going forward, leaving the purely verbal, ideological, *a priori*, statements of use.

As those dominating, for instance, Ulmi's paper:

"La richesse de sens inscrite dans l'image massaï peut en effet se moyanner. ... Ron Layton [dit]: 'Pour une compagnie, passer des accords de licence permet de réduire les risques de retombées négatives, tout en faisant des affaires lucratives, car un label tel que 'Massaï' à un impact fort'. Et pour les Massaï? 'Il y a des revenus à en tirer. Mais l'argent n'est pas tout. Le plus important pour eux, c'est d'obtenir plus de respect' ."
Ulmi (2013)

and, at least in part, the South African 'Intellectual property laws; Amendement Bill' of 2010:

"BILL: To provide for the recognition and protection of certain manifestation of indigenous knowledge as a species of intellectual property; to this end to amend certain laws so as to provide for the protection of relevant manifestations of indigenous knowledge as a species of intellectual property, namely:
● the Performers' Protection Act, 1967 to provide for the recognition and protection of performances of traditional works;
● the Copyright Act, 1978 to provide for the recognition and protection of indigenous works; to provide for the establishment of a National Council in respect of indigenous knowledge; to provide for a National Database for recording indigenous knowledge and to provide for the recording of indigenous works; and to provide for the establishment of a National Trust Fund for Indigenous Knowledge;
● the Trade Marks Act, 1993 to provide for the recognition of indigenous terms and expressions and for the registration of such terms and expressions as trademarks; to create for this purpose a further part of the trade marks register; to provide for the recording of indigenous terms and expressions; and to provide for further protection of geographical indications;
● the Designs Act, 1993 to provide for the recognition and registration of indigenous designs; to create for this purpose a further part of the designs register; and to provide for the recording of indigenous designs;
● to introduce statutory provisions to provide for the establishment of a National Council in respect of indigenous knowledge, a National Database for the recording of indigenous knowledge and a National Trust and Trust Fund for purposes of indigenous knowledge."
South Africa (2010), p.2

A number of wider questions, all related to the need to clarify the meaning and scope of the TK expression:

- what 'protection of traditional knowledge' means to indigenous people, now?;
see, for instance, Saez (2013c);

- should we teach indigenous people and local communities how to identify their TK and then how to appreciate and value it?;
see, for instance, New (2013);

- should we have 'practical workshops for indigenous peoples and local communities on intellectual property and traditional knowledge'?;
see, for instance, WIPO (2013e), WIPO (2013f).

But different questions should also be honestly tackled by people and deciders of the SDDC:

- are WE today independent of the TK still lingering (if often labelled as 'prejudice') in our society? You could doubt, if you just give a glimpse into next two cards, one about the power of prayers:

1.b [TK and Switzerland: power of prayers; card-glacier d'Aletsch]

"Des prières pour sauver le glacier d'Aletsch

Une procession se déroulera le mardi 31 juillet à l'aube à Fiesch (VS) afin d'implorer l'aide divine pour contrer le réchauffement planétaire, responsable de la fonte du glacier d'Aletsch. Détail piquant: pendant des siècles, les fidèles ont prié pour qu'il cesse de s'étendre. Il s'agit de la première procession sous cette nouvelle formule, a indiqué hier la commune valaisanne. En 2010, le pape Benoît XVI a en effet donné l'autorisation d'inverser le 'serment des catastrophes' et d'inclure dans les prières les questions du réchauffement de la planète, des changements climatiques et de la fonte du glacier. Le glacier d'Aletsch a été pour Fiesch à l'origine d'innombrables catastrophes, causant de multiples débordements du lac Märjelensee inondant la commune. C'est en 1678 que les catholiques de Fiesch ont décidé de recourir à un serment pour mettre un terme à ce fléau, avec l'aval du pape d'alors, Innocent XI. Depuis cette époque, chaque 31 juillet (jour de la Saint-Ignace), les habitants de Fiesch et Fieschertal se rendent en procession jusqu'à la chapelle Notre-Dame dans la forêt d'Ernerwald."

La Liberté (Fribourg-CH), 28 juillet 2012

Swiss people centuries ago, in the Wallis alpine canton, prayed Aletsch glacier to stop descending more and more into the valley and swallowing pastures and villages; holy processions regularly reached the lowest point of the glacier and used a special sacred formula, accepted by the Pope, to invocate God to stop the progress of glace. Nowadays, unluckily, the glacier shrinks more and more, so that the faithful resolved to organize a new holy procession to pray for the glacier not to go on shrinking. But they had to wait for the Pope to authorize this change of intention in their prayer;

and the second about 'le secret':

1.b [TK and Switzerland: 'le secret'; card-'le secret']

- "Le 'secret' comme phénomène social. … Le soin s'effectue en énonçant mentalement une formule et en la complétant d'un rituel dans lequel sont intégrées certaines données sur le malade ou la personne à soulager. p.115

(témoignage de Cédric) 'C'est le secret qui agit. Si tu respecte le règlement, il n'y a pas de problème, mais il faut être très strict. Quand tu dis le secret, il ne faut pas louper une virgule ou un point sinon ça ne marche pas, ce sont des tout petits détails que tu dois respecter à la lettre'. " p.152

Debons et al (2009)

see also, pour TK (essentiellement, pour TMK): Brüschweiler (1997), Brüschweiler (1999), Ganioz-Zufferey (2002)

Valais: 'le secret' pour agir comme 'coupe feu' et soigner les brûlures par téléphone:

- offres:

"Par téléphone:
- En cas d'urgence.
- En cas de brûlure.
- En cas de suivi de chimiothérapie et radiothérapie.
- Envoi de boules d'énergie suite à un soin.
Tarif: don sur compte postal ..."

"Je vis dans une région où les 'coupeurs de feu' sont nombreux et très efficaces. Pendant la radiothérapie que j'ai subie l'été dernier, je me faisais couper le feu par téléphone après chaque séance...je n'ai eu aucune rougeur! Je peux si tu le veux te donner le tel de cette personne si tu le désires et par adresse mail. Bon courage." [posté le 3/02/09]

- demandes:

"Bonjour, je viens aussi de savoir que je suis atteinte d'un cancer du sein je serai opérée le 19 avril et on m'a conseillé de trouver un coupeur de feu pour atténuer la douleur après la radiothérapie."
[posté le 13/04/11]

"Je cherche un coupeur de feu qui ne soit pas un charlatant et qui ne compte pas sur cela pour gagner sa vie, je dois subir 33 séances de rayons et j'ai besoin d'aide. Alors, votre proposition est-elle toujours valable? je ne sais pas comment ce forum fonctionne; est-ce possible que vous me répondiez personnellement avec mon e-mail; SANS DIVULGER MON MAIL A TOUT LE SITE. En vous remerciant par avance." [posté le 13/10/11]

"Bonjour, je recherche désespérément un coupeur de feu pour ma maman qui suit un traitement de cancer du canal anal. elle reprend demain ce traitement après 15 jours de souffrance horrible par les brûlures, merci."
[posté le 8/11/11]

Can we easily judge if praying for the inversion of a meteorological phenomenon, or asking for 'the secret', widely popular and well accepted nowadays in French-speaking Switzerland, are a sort of genuine bona-fide TK? To answer the question, and before going further, we shall therefore need some - recently proposed, perhaps largely accepted - definition(s) of TK, just to see if we know, more or less clearly, what are we talking about and if its applies to us.

- Can we define TK in a satisfactory, useful way?

We start from a tentative definition of TK given by the representative of Tupaj Amaru at the 24th GRTKF meeting, 2013:

"The representative of Tupaj Amaru recalled that he had drafted and submitted a definition of TK at a previous session of the IGC. The representative had just come back from Peru and Bolivia after lengthy consultations with the indigenous communities there and what he was going to propose had met with their approval and had the free consent of the indigenous and local communities of those countries. It was important to know what was being protected. His proposed definition, for the purpose of this international instrument, was: 'Traditional knowledge refers to the cumulative body of age-old knowledge or wisdom that constitutes traditional knowledge and collective knowledge systems that are in a constant process of development, innovations, experiences and creative practices, traditional technologies, and environmental knowledge that are closely linked to the language, social relations, spirituality, natural cycles, the conservation and sustainable development of biological diversity. The deep relationship between Indigenous Peoples and nature and the vision of the world that is possessed and upheld and has been so since immemorial times by Indigenous Peoples and local communities and has been transmitted from generation to generation. Traditional knowledge is the product of the collective intellectual activity, creations of the talent and ingeniousness of people and they are an intrinsic part of the immaterial cultural heritage of Indigenous Peoples and local communities and are irrefutable proofs of human history through point in time and space' ."

WIPO-Report-ic-24-8 (2013), p.12

Interesting and rather complete, but surely not easy to be put into a few dictionary's or glossary's words or lines!

(just a sideline, please: why and whence this worshipping of 'history'? in some non explicit way, the underlying motive seems to be: 'ancient knowledge' = wise knowledge; but how deeply 'wiser', on the contrary, the exclamation by Stephen:

"History, Stephen said, is a nightmare from which I am trying to awake."

Joyce: Ulysses, p.34)

Please go now to the following 3 carts:

1.b [TK: Definitions; card-Hansen et al (2003)]

"Traditional knowledge (TK) is the information that people in a given community, based on experience and adaptation to a local culture and environment, have developed over time, and continue to develop. This knowledge is used to sustain the community and its culture and to maintain the genetic resources necessary for the continued survival of the community.

Traditional knowledge includes mental inventories of local biological resources, animal breeds, and local plants, crop and tree species. It may include such information as trees and plants that grow well together, and indicator plants, such as plants that show the soil salinity or that are known to flower at the beginning of the rains. It includes practices and technologies such as seed treatment and storage methods and tools used for planting and harvesting. TK also encompasses belief systems that play a fundamental role in the people's livelihood, maintaining their health, and protecting and replenishing the environment. TK is dynamic in nature and may include experimentation in the integration of a new plant or tree species into existing farming systems or a traditional healer's tests of new plant medicines.

The term 'traditional' used in describing this knowledge does not imply that this knowledge is old or un-technical in nature, but 'tradition-based'. It is 'traditional' because it is created in a manner that reflects the traditions of the communities, therefore not relating to the nature of the knowledge itself, but to the way in which that knowledge is created, preserved and disseminated. Traditional knowledge is collective in nature and is often considered the property of the entire community, and not belonging to any single individual within the community. It is transmitted through specific cultural and traditional information exchange mechanisms, for example, maintained and transmitted orally through elders or specialists (breeders, healers, etc.), and often to only a selected few people within a community." (p.3)

Hansel et al (2003)

Hansel et al include, in their definition of TK, a number of interesting qualifications not often found in the literature: that TK (often seen as static and immutable) can be "dynamic in nature", that "this knowledge is not necessarily old" (which goes against the tendency to attribute to it centuries if not thousand years of life) and that "it is not belonging to a single individual within the community" (there are essays, in the GRTKF community, to include individuals among the stakeholders).

1.b [TK: Definitions; card-WIPO IC-21 (2012)]

"Article 1: SUBJECT MATTER OF PROTECTION -
DEFINITION OF TRADITIONAL KNOWLEDGE

Option 1

1.1 For the purposes of this instrument, the term “traditional knowledge” refers to the know-how, skills, innovations, practices, teachings and learning, resulting from intellectual activity and developed within a traditional context.

Option 2

11 Traditional knowledge is knowledge that is dynamic and evolving, resulting from intellectual activities which is passed on from generation to generation and includes but is not limited to know-how, skills, innovations, practices, processes and learning and teaching, that subsist in codified, oral or other forms of knowledge systems. Traditional knowledge also includes knowledge that is associated with biodiversity, traditional lifestyles and natural resources."

from the draft prepared by the secretary for the IC21 meeting, 16/20-4-'12

...

" 35. The Delegation of the EU, speaking on behalf of the EU and its Member States, believed that the definition of TK was a fundamental element of the work of the Committee with regard to finding solutions on safeguarding TK. With agreement on a clear definition of TK, the Committee could ensure that it worked from the same point of reference and would be in a much better position to finalize the other draft articles. It preferred a fairly clear and simple definition and therefore supported working on Option 1. ... In order to obtain an even clearer definition, it proposed to add, at the end of Article 1.1 under Option 1, the sentence 'as set out in accordance with the criteria for eligibility' so as to clearly establish the link between the definition and the criteria which had to be read together. ...

36. The Delegation of Cameroon indicated that while Option 1 regarding the definition of TK was concise, it was perhaps too simplistic and even hermetic. It recalled that TK was a dynamic and evolving concept and this did not come out in the definition proposed under Option 1. If this was not part of the definition, then a part of the concept of TK could be omitted.

37. The Delegation of Ecuador agreed with the Delegations of Mexico and Cameroon, that the preferred option was Option 2. Being dynamic was part of the very essence of TK, as was the fact that TK had to be passed from generation to generation. It also believed that TK should not be limited to specialized knowledge and, consequently, for a biodiverse and ethnically diverse country like Ecuador, the protection of TK was fundamental. In relation to the criteria for eligibility listed under Option 1, such a list could be a double-edged sword in that the only criteria for eligibility would be those which were listed in that option. "

WIPO-Report-ic-21-(draft), passim

This fragment from a WIPO report shows the difficulty in reaching a compact, and yet complete and usable, definition for TK, that can otherwise be found "concise, but rather simplistic and even hermetic".

1.b [TK definition and need for protection; card-Correa (2001) interest of TK]

- "Recently, Western science has become more interested in TK and realised that TK may help to find useful solutions to current problems, sometimes in combination with 'modern' scientific and technological knowledge. Despite the growing recognition of TK as a valuable source of knowledge, it has generally been regarded under Western intellectual property laws as information in the 'public domain', freely available for use by anybody.
...
The use and continuous improvement of farmers' varieties (landraces) is essential in many agricultural systems. In many countries, seed supply fundamentally relies on the 'informal' system of seed production which operates on the basis of the diffusion of the best seed available within a community, and on its movement, even over large distances during migration or after disaster. Furthermore, TK is the origin of a great variety of artistic expressions, including musical works and handicrafts. ... Mostly, TK comprises of knowledge which has been developed in the past, but which still continues to be developed. Most TK is, in effect, of non-contemporary nature; ... . However, TK is not static; it evolves and generates new information as a result of improvements or adaptation to changing circumstances.

The context of TK varies significantly and its forms of expression. Some TK is codified, that is, formalised in some way (eg textile designs, ayurveda traditional medicine). A great part of TK, however, is non-codified or tacit, such as, 'folk', 'tribal' or 'indigenous' medicine, which is based on traditional beliefs, norms and practices accumulated during centuries old experiences of trial and error, successes and failures at the household level, and passed to successive generations through oral tradition. TK may be possessed by individuals (eg healing practices and rituals), by some members of a group, or be available to all the members of a group ("common knowledge"), for example with knowledge on herbal-home remedies which is held by millions of women and elders. ... While some TK can be used and understood outside its local/traditional/communal context, this is not always the case. There are often spiritual components in the TK peculiar to each community. ...

To summarise, TK includes information of different kinds and functions, developed in ancestral times but subject to contemporary improvement and adaptation. It is expressed in various documented and non documented forms, and may possess commercial value depending on its potential or actual use. ... One reason for a lack of clarity about the rationale for protection stems from the different meanings given to the concept of protection. Some understand this concept in the context of IPRs, where protection essentially means to exclude the unauthorised use by third parties.
Overall, however, the main arguments for granting protection to TK include:
• equity considerations,
• conservation concerns,
• the preservation of traditional practices and culture,
• the prevention of appropriation by unauthorised parties of components of TK, and
• promotion of its use and its importance in development".

Correa (2001), passim
www.tansey.org.uk/docs/tk-colourfinal.pdf

Correa seems to think that a formal, compact, general definition of TK is not necessary, and perhaps irrelevant; while its 'core' can be correctly defined by listing its history, practices, development, future.

We have had lately the impression that the definition(s) of TK have entered a dynamical, ever changing phase, during which a number of almost fixed characteristics that seemed to crystallize, in a way, the very 'paradigm of TK' are moving. We take, for instance, two examples from the 'Indigenous panel' which took place at the 23rd GRTKF-ic meeting in Geneva (February, 2013):

(Gupta, India): analysis of the potential role of individuals in any indigenous/local community, which necessary introduces a number of changing, dynamical components into TK (leading to the need to, at least partially, give up the famous 'ancestral' 'mantra')

(Rivera Zea, Peru): TK should not be taken as a whole, already conceptualized and ready for use by its stakeholders; instead, it should be searched for actively, and be felt as an important field of research inside the indigenous/local community by the its very members (giving up, at least partially, the traditional 'mantra' of TK as integral, organic and even, often, 'sacred' component of the everyday life of the community)

We don't know, however, how far and how intensely these attempts at changing the more traditional TK paradigm will develop - and could be accepted - in the future; they are clearly not without important consequences on the very definition of 'TK-stakeholder' (always collective? sometimes individual?) and consequently on the desired 'sharings of profits'.

After this short dip into the - always dangerous - 'exercise in definitions', are you ready to decide if the 'secrets' of the Swiss 'coupe feu' should be defined as TK and, at the same time, should be accepted as valid 'knowledge'? should they be 'protected'? should they be 'promoted'?

We can perhaps begin here a longer, less easy, trip into the tangle of opinions, hopes, dreams surrounding the practice of TK, the ideological use of TK, the need for 'protection' of TK, the need for 'promotion' of TK. Later on, in Chapter 6, we shall come back to the possible need, utility and dangers of a monetary side in the TK ownership, throughout IPRs and/or possible '*sui generis*' IP devices. Where of course such a material incentive can stimulate a heavy crop of 'invented traditions'.

No one doubts that large populations and communities, either outside the realm of the **self-defined-developed countries** [**SDDCountries** for short in the following], or inside - as uneasy 'islands' - the so called (as suggested once by Fidel) **under-developing countries** [**UDCountries** for short] - find in the different sorts of their TK the main useful frame for their daily work and the overall scaffolding for their general system of knowledge.

[we ask our pardon to our readers/visitors/fellow-travellers throughout the Maze: SSDC and UDC are clearly unwieldy acrostics, but we cannot stomach the standard definitions of 'developed countries' and 'developing countries'. Are 'We' to decide who is 'developed' and 'how' it has to

develop? At the farce that was the so-called 'Interim agreement for peace and self-government in Kosovo' (Rambouillet, february 23, 1999), ch.4a-I.1 states: "The economy of Kosovo shall function in accordance with free marked principles". Is THAT a definition of 'developed' ?; is THAT a requirement for a country to be defined as 'developing'?]

But where our understanding of these 'islands' can fail, it is just in the difficulty of a realistic, matter-of-fact representation of these communities, populations, ethnical groups, 'Nations' (in the Brazilian acceptation of the term), and of their own approach to their TK.

"Even today Polynesian sailors, with which I have voyaged, readily name 250 stars the night sky. Their navigators can sense the presence of distant atolls of islands beyond the visible horizon by watching the reverberation of waves across the hull of their vessels, knowing that every island group had its own effective pattern that can be read with the ease with which a forensic scientist reads a fingerprint."
Davis (2010), p.44

- Can we get at least a reasonably representation of an 'indigenous community'?

We hope that the following Lévi-Strauss card will help you to see how much romantic fantasy there could be in our outlook to these exotic 'islands' and their inhabitants:

1.b [indigenous populations; card-Lévi Strauss (1994)]

"Décimés par une épidémie de rougeole en 1945 puis en 1975, réduits au nombre de sept ou huit cents, les Nambikwara mènent aujourd'hui une vie précaire auprès des missions religieuses et des postes administratifs qui veillent sur les Indiens, ou bien, campés au bord d'une route où circulent les poids lourds; ou encore, dans les faubourgs de la ville de soixante milles habitants [Vilhena] qui s'élève au coeur de leur territoire. ...

Mais quand, en 1992, à l'occasion du cinquième centenaire de la découverte de l'Amérique, on fit venir à Mexico, pour les besoins d'un film, des représentants d'une douzaine de peuples amérindiens dont des Nambikwara, ceux-ci ne furent nullement déconcertés. Ils arrivèrent, raconte un témoin, munis d'une provision de tracts en anglais, espagnol et portugais, dénonçant les forfaits des chercheurs d'or. Enchantés de leur séjour, ils repartirent avec des transistors, meilleur marché, remarquèrent-ils, que ceux en vente à Vihlena où les boutiques abondent en produits japonais. ...

Ceux qui feuilletteront ce recueil devront se défendre d'une autre illusion. Croire que tels que je les leur montre, ces Indiens complètement nus (bien qu'il fasse froid la nuit et au petit matin), dormant à même le sol sous des abris improvisés de palmes ou de branchages; qui ne fabriquent — et rarement — qu'une poterie rudimentaire et, en fait de tissage, ne confectionnent que des petits ouvrages de sparterie destinés à la parure; qui cultivent, entre les périodes de nomadisme, des jardins très modestes; que ces Indiens offrent l'image d'une humanité primitive. Pour ma part, je ne l'ai jamais cru, et depuis une vingtaine d'années, les preuves s'accumulent que le présent ne reflète pas des conditions archaïques. Les peuples du Brésil central et d'ailleurs sont les résidus, enfuis dans l'intérieur du pays ou bien laissés sur place, de civilisations plus hautes. ...

A Marajo et sur le bas-Amazone, des objets de pierre superbement polis, des céramiques peintes et ornées de motifs modelés étaient attribuées à l'influence des civilisations andines. Elles auraient dégénéré, croyait-on dans la forêt tropicale humide, pauvre en ressources animales et végétale et dont le sol et le climat défavoriserait les établissements humains. C'était méconnaitre les possibilités agricoles offertes par les plaines alluviales le long du fleuve et des rivières, et surtout le fait, démontré par les botanistes travaillant sur le terrain et d'après les photographies aériennes, que la forêt amazonienne n'est pas partout aussi primaire qu'on se plaisait à le dire. En maints endroits, la forêt a repris le dessus quand furent exterminés ou chassés dans les interfluves les indiens qui l'avaient défrichée et cultivée. ...

Pas seulement en Amazonie, aussi sur son pourtour. En Bolivie, en Colombie, la photographie aérienne a révélé les vestiges de systèmes agricoles perfectionnés datant des premiers siècles de notre ère. Sur des dizaines et parfois des centaines de milliers d'hectares de terres inondables, des talus élevés de main d'homme, ... assuraient une irrigation permanente et mettaient les cultures à l'abri des eaux. On y pratiquait une agriculture intensive à base de tubercules, qui associée à la pêche dans les canaux, pouvaient nourrir plus de mille habitants au kilomètre carré."

Lévi-Strauss (1994), Prologue

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while next card, out of the original text of a '*cahier de doléances*' from an Indian Nation in Brazilian Amazonia, will help you enter into the complex archaic and at same time strangely modern self-representation of one of these overtly polemical Nations:

1.b [indigenous populations; card-Shawandawa (2013)]

- "CARTA DAS LIDERANÇAS INDÍGENAS PARA OS GOVERNOS E SOCIEDADE

Nós lideranças indígenas dos povos Ashaninka, Yawanawa, Huni Kuĩ / Kaxinawa, Katukina / Noke Kuĩ, Manchineri, Shawãdawa, Shenenawa, Jaminawa, Nukini, Puyanawa, Nawa, Apolima-Arara, Kuntanawa, de 24 Terras Indígenas, reunidos na cidade de Rio Branco, no Centro de Formação dos Povos da Floresta, nos dias 4 a 6 de março de 2013, aceitando uma convocação da AMAAIAC e da OPIAC, como organizações legítimas, manifestamos o que segue:

A partir deste momento retomamos coletivamente a organização da nossa luta pela defesa de nossos direitos. Faremos isso a partir de encontros anuais e pelo fortalecimento das associações nas nossas terras indígenas. A decisão de reorganizar os povos indígenas se deu porque sentimos na pele os entraves, que pela falta de diálogo, estão interferindo na qualidade das ações públicas para nossas terras e comunidades, que estão chegando sem o cuidado necessário. ...

Pesam sobre nós afirmações de que, nós indígenas, queremos discutir apenas os direitos, mas nunca os deveres. Com este encontro, começamos um caminho firme para enterrar essa falsa ideia. A verdade é que temos pouca atenção por parte do poder público governamental e a atenção que temos é, na maioria das vezes, de dentro para fora, sem conversar, sem debater, sem decisão conjunta. Nestes dias discutimos também sobre o movimento indígena, as responsabilidades e as representações e o que é ser uma liderança hoje, as que têm compromisso com a comunidade e as que não têm.

Com seriedade e com responsabilidade discutimos que é verdade que avançamos em direitos e que conquistamos muitas coisas com os governos, mas hoje vimos que tudo pode ir por água abaixo, as políticas públicas estão fracas ou não existem mais! ...

Avaliamos o quanto os governos não sabem lidar com as diferenças, coisa que ensinamos para eles há mais de 40 anos, ainda com nossos avós e nossos pais lutando pela demarcação das terras indígenas; o quanto ainda existe preconceito e o quanto os governos aceitam propostas equivocadas, às vezes vindas dos próprios parentes, para sair generalizando com afirmativas do tipo 'os índios pediram', 'os índios quiseram', ou ainda, 'os índios não se entendem em lugar nenhum'. Agora, nós decidimos acabar com isso, 'os índios' não existe! Existem povos indígenas com culturas diferentes, necessidades, modos e interesses diferentes. ...

Para começar o diálogo e alterar esta situação, propomos as seguintes medidas urgentes:

- Educação Escolar Indígena ...

- Gestão Territorial e Ambiental das Terras Indígenas ...

Rio Branco, 7 de março de 2013."

Shawandawa (2013), passim

There you will see how the self-definition of this community integrates smoothly the repeated affirmation of a definitely 'non-white' nature of their society with the equally explicit demand for forms of social organisations that are clearly a legacy from the 'white' society, as the totally conventional school system.

[just as a side-line: if you and we could stop for a while, at this point, our wandering throughout the Maze, as we have touched here such a delicate theme: of autonomous social order, dialectical intercourse and inter-dependence among historically different societies, values judgements of one society on the others, ..., we should calmly sit down (are there calm sitting places in the Maze? we haven't find one yet!) and read - not just saying: 'see also'; but asking 'read also'; and then we could slowly appreciate Alcida Rita Ramos: Indigenism; Ethnic politics in Brazil. Madison: University of Wisconsin P., 1998; a reading that could leave traces in your life]

But of course we feel a bit obliged to go on; there is so much to see, so much to read, so much to think about! And we are offering you 3 more cards:

1.b [indigenous TK; card-Colombo Dougoud et al (2010)]

- "Ce livre, consacré aux peintures sur écorce du nord de l'Australie - Terre d'Arnhem et Kimberley -, présente la collection du Musée d'Ethnographie de Genève enrichie d'une sélection d'oeuvres provenant d'autres musées suisses. Les nombreuses illustrations mettent en évidence les qualités artistiques et symboliques de ces écorces encore utilisées lors des rituels pour la transmission de la connaissance sacrée. (quatrième de couverture)
...

Des milliers de récits chantés, dansés et peints se déploient, d'un groupe à l'autre, sur l'ensemble du continent australien pour raconter la formation du cosmos et de ces différents écosystèmes par des êtres ancestraux individuellement nommés qui sillonnent la terre, le ciel et la mer, prenant forme humaine ou animale, ou sous l'apparence d'astres et de phénomènes météorologiques. Dans un lointain passé mythique, ces êtres spirituels généralement appelé *wanarr ...* façonnèrent et donnèrent sens au cosmos tel qu'il continue d'exister aujourd'hui. (p.26)
...

Avec une économie domestique qui est toujours largement basée sur les produits de la chasse, de la pêche et de la cueillette, les Aborigènes du Nord de l'Australie ont maintenu une connaissance très poussée des cycles de reproduction et des comportements animaux, et des différents habitats dans lesquels ils évoluent." (p.97)

Colombo Dougoud et al (2010)

1.b [indigenous TK and rituals; card-S.A. (2012)]

- "Who-owns-the-past?

A rare set of nearly 10,000-year-old human bones found in 1976 on a sea-side bluff in La Jolla, Calif., may soon be removed from the custody of the University of California, San Diego, and turned over to the local Kumeyaay Nation tribes. The kumeyaay have long sought control over the bones, which they contend are the remains of their ancestors. In accordance with new federal regulations, the university has initiated the legal process to transfer the remains to the Kumeyaay in the absence of other claimants. Kumeyaay have said they may rebury the bones. Being some of the oldest human skeletal remains in North America, the bones could help scientists piece together the peopling of the New World. The excellent preservation of the specimens hints that they might contain DNA suitable for analysis with techniques geneticists have recently developed — the results of which could yield crucial insights into where early Americans came from. Such studies may never come to pass.

Some might consider a loss of knowledge an acceptable trade-off to right the historic wrongs that the Kumeyaay and other Native peoples have suffered. Archaeologists and anthropologists of yore treated Native Americans disgracefully, looting their graves and using the remains to argue for the intellectual inferiority of Native Americans to peoples of Caucasian descent. But what makes this case disturbing is that the Kumeyaay claim is based on folklore. The physical evidence indicates that the La Jolla bones are not affiliated with any modern tribe, including the Kumeyaay, who moved into the area only within the past few thousand years. The new federal regulations are blind to this evidence. In effect, they privilege faith over fact.

The original intention of the Native American Graves Protection and Repatriation Act (NAGPRA), passed in 1990, was to facilitate the return of Native American bones and sacred objects to descendants and culturally affiliated groups. NAGPRA sought to balance the rights of Native Americans to reclaim ancestral remains with the right of society as a whole to learn about our collective past. By and large, the law was succeeding. ...

Many Native Americans do not object to studies per se but to analyses that destroy remains. Respecting this concern, anthropologist Ventura Pérez of the University of Massachusetts Amherst, who studies violence, has developed techniques for making high-quality replicas of cut marks on bone that leave the skeletal material intact and allow it to be repatriated, while creating a permanent record for future scholars. ...

The colonization of the New World was a watershed in the odyssey that carried *Homo sapiens* from its African birthplace to the entire globe. The stories of the trailblazers who accomplished that feat deserve to be told. Their remains are the shared patrimony of all Americans and, indeed, all peoples everywhere."

(S.A., 2012)

1.b [indigenous TK and rituals; card-Hopi (2013)]

- "In a chaotic auction repeatedly interrupted by protests, dozens of Native American tribal masks were sold Friday after a French court ignored the objections of the Hopi tribe and the U.S. government. The total tally was 931,000 euros ($1.2 million), with the most expensive, the 'Mother Crow,' selling for 160,000 euros ($209,000) - more than three times the pre-sale estimate. Of the 70 masks up for sale, one was bought by an association to give back to the Hopis, the Drouot auction house said.

Advocates for the Hopi tribe had argued in court the masks have special status and are not art - they represent their dead ancestors' spirits. The Hopis, a Native American tribe whose territory is surrounded by Arizona, nurture the masks as if they are the living dead. But the auctioneer insisted any move to block the sale could have broad repercussions for the art market in general and potentially force French museums to empty their collections of indigenous works.

The Katsinam, or 'friends', masks made up nearly all of the 70 lots that went on display at the auction house, offering a rare public glimpse of such works in Europe. The masks are surreal faces made from wood, leather, horse hair and feathers, and painted in vivid pigments of red, blue, yellow and orange. They date to the late 19th century and early 20th century, and are thought to have been taken from a reservation in northern Arizona in the 1930s and 1940s. Hopi representatives contend the items were stolen at some point, and wanted the auction house to prove otherwise.

As the auction got underway two and a half hours after the court ruling, Jo Beranger, a 52-year-old French filmmaker, yelled as auctioneers showed a 1970s image of a Hopi leader in tribal beads and holding a mask. Beranger told The Associated Press that the Hopi leader had since died, and it was 'a scandal' and 'shameful' that he was shown. Security guards escorted her out of the auction hall. About a dozen protesters from a French group that sides with the Native Americans gathered outside - one waving the flag of the American Indian Movement.

In Arizona, Hopi Chairman Le Roy Shingoitewa said that the judge's decision to let the sale go on was disappointing but not unexpected. 'It's a whole new legal field that many tribes have not truly experienced', he said. 'So I think the Native American tribes in the United States are going to have to start looking at this area of being able to try to protect our cultural areas as well as sacred sites'. Shingoitewa said the tribe did not attempt to bid on the objects Friday. ... 'Maybe in their hearts, they may feel that they can return them back to 'the place they started and the home they had', he said. 'That would be my plea. After the 'Mother Crow' mask dating from about 1880 was sold, a protester shouted 'this is not merchandise, these are sacred beings!' before being pushed out of the room by a security guard and breaking into tears. ...

In its ruling, the court noted the Hopis ascribe 'sacred value' to the masks but 'clearly they cannot be assimilated to human bodies or elements of bodies of humans who exist or existed' - the sale of which would be banned in France."

Hopi (2013), passim

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that will take you nearer the reality of daily indigenous life, without the rhetorical deforming sad infantilizing Western attitude toward '*le bon sauvage*'.

But next card will alert you on an always pending danger, when Western people's approach to the presumed idyllic life of '*le bon sauvage*':

1.b [indigenous TK and rituals; card-traditions (2011)]

- "La Déclaration universelle sur la diversité culturelle adoptée par l'UNESCO, dont nous célébrons cette année 2011 le dixième anniversaire, élève la diversité culturelle au rang de 'patrimoine commun de l'humanité'. ... Cette déclaration historique fait de la défense de la diversité culturelle 'un impératif éthique, indissociable du respect de la dignité de la personne humaine'. ...

Bien que nos peuples aient affronté historiquement la négation de leurs droits, le vol de leurs connaissances ancestrales et la destruction de leurs systèmes de vie, ils possèdent encore un héritage culturel riche et varié de savoirs, de langue, de valeurs, de traditions, de coutumes, de symboles, de spiritualités, de formes d'organisation et de normes de vie en commun, de représentation du monde et de conceptions du développement, qui constituent la base de leur patrimoine culturel et leur permettent d'interagir d'influer positivement sur les milieux économiques, sociaux et politiques... des pays de la Région. ...

La vie spirituelle des communautés andines se manifeste dans la plénitude lors des célébrations, dans leurs musiques, ... Elle s'intensifie encore plus lors des célébrations rituelles - fêtes célébrées dans leurs centres rituels, lieux où la *loqt'a* (table rituelle) atteint les divinités tutélaires, celles qui engendrent les communautés... Si la production n'est pas 'rituelle', alors les produits et la nourriture n'on pas leur *qamasa* (âme ou esprit'), or celle-ci est la substance ou l'énergie qui alimente et soutient la vie. ...

Ici, nous nous rendons compte de l'importance énorme de Traditions pour Demain qui nous a permis de restituer aux communautés la vie rituelle et heureuse qu'elles avaient peu à peu perdue ... du fait de l'imposition culturelle à laquelle elles ont été soumises et qui les a obligées à oublier et à perdre tout contact avec la terre mère, les *Achachilas* (divinités tutélaires des communautés qui habitent les montagnes) et les autres divinités protectrices."

traditions (2011), passim

You will find there the wishes of a group of Western humanitarian well-wishers who, in good or bad faith (who knows?), desires to take initiatives that would permit an Indian Andean community to come back to their lost divinities and other spiritual, tutelary entities. So it seems that, while the community had been able to disentangle themselves from tutelary divinities, this evolution apparently did not fit with this Western group of well-wishers' image of the *bon sauvage*, so that they have decided to strive - and ask for funds - to send them back to their *true nature* and their *natural* fears.

- Reasons for protection and promotion (or development) of TK

We find, in the WIPO literature, a statement on the origins of WIPO's interest in and involment with TK:

"WIPO started to work on TK in 1998 learning of the needs and expectations of some 3,000 representatives of TK-holding communities in sixty locations around the world."
WIPO-Booklet 2 (w.d.), p. 5

(were the 'needs and expectations' born spontaneously 'around the world', or perhaps were they somehow solicited and provoked by largely 'Western' interests?)

and we can follow somehow the development in time of this interest through the reports of its General Assemblies:

"The Delegation of Nigeria believed that the work of the Policy Advisory Commission had a great bearing on the hopes and aspirations of developing countries. The Report of the Commission showed that it was taking into account the concerns of developing countries whose cultural wealth, such as folklore and traditional knowledge, represented some of its major assets."
WIPO-Report-wo-ga-24-12 (1999), p. 16

"WIPO's work on 'expressions of folklore', which are a subset of traditional knowledge, began as early as 1978 in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO). It has thus progressed to a more advanced stage than the work on traditional knowledge in general. A concrete product of this work was the adoption in 1982 of the 'Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions' (the Model Provisions). Most recently, WIPO and UNESCO conducted four Regional Consultations on the Protection of Expressions of Folklore, each of which adopted resolutions or recommendations with proposals for future work. Three of the four consultations recommended the establishment within WIPO of a separate committee on folklore and traditional knowledge to facilitate future work in this area. (The General Assembly proposes the establishment of an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore [ICGRTKF])."
WIPO-Report-wo-ga-26-6 (2000), p. 3

It is a bit hard to follow the multiple imbrications of the TK activities by WIPO' General Assemblies and of its Development Agenda with those of the newly born ICGRTKF and even those of the WIPO's Committee on Development and Intellectual Property (CDIP), but we try and give some examples:

"In its 2007's general assembly WIPO adopted the 45 recommendations under the WIPO Development Agenda and proposed 'to urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments'."
WIPO-Report-wo-ga-34-16 (2007) p. 69

The "without prejudice to any outcome, including the possible development of an international instrument or instruments" is splendid! it opens new, unexpected horizonts; it creates new hopes of recognition and - why not? - some power.

Going now through the very abundant WIPO literature concerning its Development Agenda, CDIP, CIGRTKF, ..., as well the corresponding UN, UNESCO, ... documents on the same theme, we will encounter two new 'mantras', both of which have, at first sight, the quite respectable aspect and sound of legitimate words, corresponding to legitimate concepts. It is only when you meet them in their Maze context that their hollow nature becomes evident.

The first 'mantra' is 'protection'; the second 'mantra' is 'promotion' (which can take sometimes the exterior form of 'aid to development'; as a matter of fact, 'mantras', by their hollow nature, can take different 'avatar' forms).

Let us start from:

The UN Declaration on the Rights of Indigenous Peoples:

"Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."
UN (2007), Art.31(1)

It is hard to believe that a single group or population or people could be able to perform all of this herculean tasks, assigned to them (imposed on them?) by the never sleeping Pontiffs of the UN bureaucracy.

Probably this text - it is only a small part of the whole solemn 'Declaration' - is one of the densest site where to fish for 'mantras' in the whole Maze: 'control', 'protect', 'maintain', ...

But there could be a number of contenders for the prize:

"Whether TK is understood in the strict sense as encompassing only knowledge and ideas as such or in a broader sense as extending to expressions of knowledge and ideas as well (i.e. traditional cultural

expressions, or CEs), TK serves as a means of physical survival and of cultural identity, and thus must be understood holistically. ... Indigenous peoples, the custodians of much of the TK over which these legal reforms are taking place, emphasize a holistic approach towards protecting their TK. While legal and economic discussions tend to compartmentalize resources as land, minerals or genetic resources, indigenous peoples view their TK as inseparable from all these elements. TK has ancestral and historical value for these peoples and cannot be 'isolated' from larger questions of their cultural identity and survival. TK is seen as for the collective benefit and well-being of communities, not to be 'cut in pieces' and treated merely as merchandise." p.141
McMain et al (2011), passim

Here we find a number of old friends, 'holistically', 'holistic', 'ancestral'; and some new friends: 'expression of knowledge', 'custodians' ...

Let us fish just a bit more:

- "Traditional knowledge is an important element of the intellectual and cultural heritage of indigenous peoples. It reflects their social and historical identity and significantly contributes to the future well-being and sustainable development of these peoples. In 2007, the Lauravetlan [Chukchi or Lauravetlans from north-eastern Asia] Information & Education Network of Indigenous Peoples (LIENIP) organized a series of educational conferences, aimed at fostering greater understanding on the nature and evolution of this phenomenon and encouraging mutually beneficial relationships among representatives of indigenous communities, academia, professional entities and international organizations. ... Reasons for this reflected the wider economic and political developments, which included the development of a knowledge-based economy; the desire to employ non-Western ideas in commerce; the recognition for the need to include 'underrepresented populations' in decision making at higher levels; concerns for protecting the environment; and the rise of indigenous political activism at the international level. Many projects have thereby been developed, focusing on this interrelationship between indigenous issues and traditional knowledge and the wide range of aspects involved, which required the expertise, study and practice of specialists in the areas of law, politics and academic research."
Popova-Gosart (2009), passim

We have found 'knowledge-based economy' and 'non-Western ideas in commerce'; not bad!

See a last one:

"The Ecuadorian indigenous people of the Amazon have lived in the rain forest for centuries and have developed valuable knowledge which is useful for future improvements in the field of medicine, agriculture and environmental management, among others. This information is considered a 'gold mine' for universities, research institutes, laboratories, pharmaceutical companies and other entities that seek innovative ways of managing natural resources by taking advantage of the knowledge of indigenous people on this issues. However, traditional knowledge has been snatched from these people without asking their permission or at least providing them with fair economic compensation. ... For indigenous people, traditional knowledge is not only a potential source of income but also a valuable cultural heritage and a survival tool that must be respected and protected".
Almeida (2007), p.209

We do not want to imply or suggest that the whole of the TK material in the Maze is nullified by the pervasive presence of the 'mantras'; several texts (event the fragments quoted above) can have their merit, express interesting ideas, propose new problems; some of the most provocative texts can usefully shake a number of standard prejudices in our Western mind (remember that we are irreducibly "We"!). But the generalisation of the use of 'mantras' as ready-made building blocks for arguments and sentences in most of the Maze material, if it makes things easier for the authors, makes at the same time their productions sterile.

Now that you are getting familiar with the sport of 'mantra' spotting and 'mantra' fishing, we have to try and understand whence this inordinate use of 'mantras' comes from. It is clear that 'protection' and 'promotion' - as well as all the other examples identified above - have their well defined semantic space; why are they not used inside those limiting, but useful borders?

If you scrutinize the way 'mantras' are used, you will rapidly discover the reason: those words have, all of them, a meaning with some emotional impact: 'protection' (in a period of insecurity!); 'development' (in a period of recession!); 'ancestral' (thinking of your loved grandmother?),

- so that, when for instance 'protection' is used in its most classical presence in the Maze (in general, while arguing around bio-piracy), the emotional association with 'piracy', that implies that something has been stolen (knowledge on the medical properties of a plant, for instance), leads to the conclusion that something should have been 'protected' from theft (namely, the relevant TK)

add DB (2015)

- therefore, victim of the emotional charge of the word, nobody asks the so simple and rational question: "why do you say that something has been stolen? but the knowledge of the properties of that plant is still with you! no one can steal that knowledge! you can still use that plant as you did (let us say) for centuries!"

And so, the use of a 'mantra' is not only a way to grind nicely sounding words into an empty palaver, but is has also (perhaps essentially) the more sinister role of obdurate our understanding, by making appeal to emotional associations, dulling so our vigilance.

Let us end this section with a last card:

1.b [the safeguarding of traditional cultures; card-Torsen et al (2010)]

- "Traditional cultures embody exquisite and distinctive creativity and are of immense cultural, historical, spiritual and economic value to indigenous peoples and traditional communities the world over. Defining the appropriate role of intellectual property (IP) in the protection, preservation and promotion of traditional cultural expressions (TCEs) is a priority for the World Intellectual Property Organization, and is the subject of various normative and capacity-strengthening programs. WIPO's work is, partly, based upon the growing interests of indigenous peoples and traditional communities in owning, controlling and accessing documentation of their cultures held by museums, libraries and archives. ... Collections of TCEs raise unique IP challenges and, in response, institutions and researchers in many countries are developing new frameworks for understanding the legal, cultural and ethical implications of caring for TCEs. Through this shift, cultural institutions seek more direct and instrumental relationships with communities, actively engaging with the expertise of tradition-bearers, to foster new cross-cultural partnerships to enrich cultural work. Many museums, libraries and archives, and their professional associations, have established exemplary practices and protocols to deal with IP issues. ...

An illustration: The Djalambu [Hollow Log] Ceremony: In 1963, a husband and wife team of researchers travelled to central Arnhem Land in the Northern Territory, Australia. In the process of their fieldwork, they recorded in film and sound recordings the important Djalambu [Hollow Log] ceremony. This ceremony represents one of the final acts in the Yirritja mourning rights – where the body is interned in the Djalambu [Hollow Log]. The recording of the ceremony featured Djäwa who was the leader of the Daygurrgurr Gupapuyngu people. ... In 1997, one of Djäwa's sons, Joe Neparrnga Gumbula composed a song called 'Djiliwirri' for his band, Soft Sands. The song was about Joe's homeland Djiliwirri – 'a forest estate inherited from his father through the Gaykamangu yarrata patriline.' The song 'alludes to the veiled core of hereditary sacredness held in perpetuity by the Daygurrgurr Gupapyngu'. In creating the video clip to accompany the song, Joe decided to inter-cut the present with the past, and to show images of his father from the 1963 Djalambu recording. As Joe explained, 'that Djalambu ceremony was filmed in 1963 with my father [Djäwa] who, during that time, was the leader of the Daygurrgurr Gupapuyngu people. I called the [AIATSIS] archives in Canberra where they dubbed it for me from 16-mm to beta cam and then sent it over to Darwin where I was editing my video clip. ... All the people who were in the film from 1963 are all gone. They're all dead. So we, the people of this generation, have made another Djalambu film, which is also in the video'. Joe's video clip almost certainly infringed the copyright of the couple who recorded the ceremony in 1963. The couple made the films and sound recordings: they were the ones who owned the rights in these works and objects of related rights. ... Could this perhaps have been excused under an exception or limitation, such as Australian 'fair-dealing'? Given that the video clip was to accompany a rock n' roll song, a commercial work, such a use would probably not have fallen under any exception or limitation, despite the cultural dimensions of the situation. ... Who then should be entitled to make decisions concerning the films and recordings? The researchers? The community? The archive?"

Torsen et al (2010), passim

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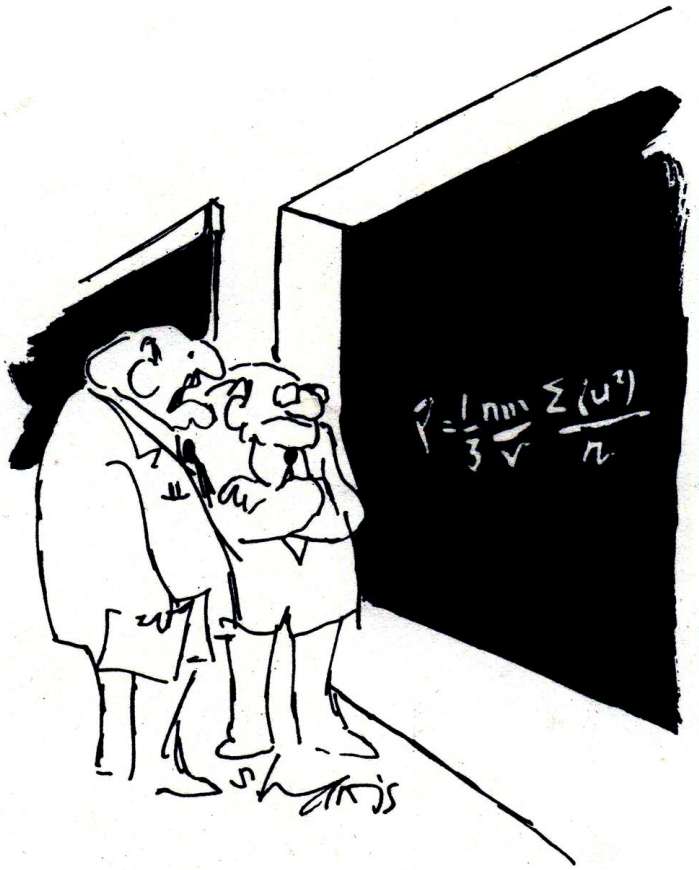
were 'safeguarding' is a frequent avatar of 'protection'.

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add 1.b: Powles (2014)
Velásquez (2015)
Velásquez (2015a)

Chapter 2

COULD TMK PROVE MORE STABLE THAN SCIENCE?



"What's most depressing is the realization that everything we believe will be disproved in a few years."

Sidney Harris

Chapter 2 - Origins and motivations at the roots of WHO's involvement in traditional medical knowledge (TMK)

Introduction to Chapter 2

When we enter the TMK/WHO sub-space in the Maze, we have just from the beginning an appeasing feeling of calm and peace: a feeling of finding, at last, some 'reasoning' rather than the 'throwing 'mantras' around style' that pervades the Maze and from which we have suffered until now. This feeling is perhaps naive and could depend merely on the so much more troubled sub-spaces we have already travelled through; and anyway we shall find later, more or less, the same tense situation when exploring the whole of the TMK space.

(If we have chosen not to explore explicitly the TMK/WIPO subspace in the Maze, it is because TMK seems to have been rather early swallowed into the larger and more general TK/WIPO sub-space; most of the cursory hints to TMK in WIPO's literature are just only reminders of WHO's definitions)

But let us see why it could be worthwhile to explore in depth TMK:

"Traditional medicine (hereinafter 'TMK') includes knowledge and practices either codified in writing or transmitted orally. Noncodified, orally transmitted knowledge is generally held and used only within a limited circle of people such as within specific indigenous or rural communities and falls within the sometimes used terms 'indigenous' (or 'tribal'), 'farmers' (or 'rural'), 'popular' (or 'folk') knowledge. Systems of TMK codified in writing are often sophisticated systems of medicine supported by theories and rich experience. Such TMK is often widely diffused on a national scale as well as beyond national borders, as in the case, for example, of Traditional Chinese Medicine (TCM), Ayurveda, Unani, Tibetan, Mongolian and Thai traditional medicine, Kampo and Korean traditional medicine (based on TCM). In some cases, different TMK systems coexist within the same country. ... TMK serves the health needs of the vast majority of people in the UDCountries, where access to 'modern' health care services and medicine is limited by economic and cultural factors. TMK is broadly used in such countries, often being the only affordable treatment available to poor people and those in remote communities. In a context of persisting poverty and marginalization and, in particular, in view of the high prices generally charged for patented medicines, the relevance of TMK in UDCountries may, in the future, increase.

TMK also plays an important role in the SDDCountries. Many pharmaceutical products produced and used there are based on, or consist of, biological materials sourced through reference to traditional medicine. These include compounds extracted from plants and algae, as well as from microbial sources and animals. Plants, in particular, are an indispensable source of pharmaceuticals. The demand for 'herbal medicines' has grown dramatically in recent years. The world market for such medicines has reached, according to one estimate, US$60 billion, with annual growth rates of between 5 and 15 per cent."

Correa (2002), passim

We will find often this statement, about the observation that "the demand for 'herbal medicines', even in the best self-defined 'developed countries', has grown dramatically in recent years". We have found no clear-cut analyses of this trend, that we see confirmed in many contributions in the Maze. More quantitative data are lacking. Could it be that the health's system covers tends to be more and more expensive, while the use of medical herbs - mostly in self-medication - is cheaper? Could it be that some sort of fringe TMK lingers still in the populations of the industrialized countries, facilitated by the growing mistrust on state authority, intellectual arrogance and 'Western science' unwarranted pretence to omniscience?

There is indeed a clear tendency toward 'surprise' and 'excitement' towards scientifically proved medical, positive effects of drugs and plants originating in 'natural sources' and present in TMK, as a recent e-med@healthnet.org message proves:

"Une équipe de recherche dirigée par Michel De Waard, directeur de recherche à l'Inserm à Grenoble, a découvert qu'une plante médicinale africaine produisait des quantités importantes de molécules antidouleur. Plus surprenant, après analyse, la molécule s'est avérée identique au Tramadol, un médicament de pure synthèse très largement utilisé comme analgésique dans le monde entier. D'après les chercheurs, c'est la première fois qu'un médicament de synthèse issu de l'industrie pharmaceutique est découvert à forte concentration dans une source naturelle. ... *Nauclea latifolia* est un petit arbuste ... En médecine traditionnelle, notamment au Cameroun, cette plante est utilisée dans le traitement de différentes pathologies incluant l'épilepsie, la fièvre, le paludisme et la douleur." Bruneton (2013)

where Carinne Bruneton does not seem to know that the large spectum of proposed therapeutical effects (including, e.g., 'epilepsy') of the plant seeds some doubt on the TMK efficacy of the tradition and the possible dangers of its use, as the following quotation proves:

"Traditional uses In West and South Africa infusions and decoctions of the bark and leaves are used for the treatment of stomach pains, fever, diarrhoea, and against parasites, like nematodes in men and animals, and tropical diseases like malaria. In Kano (Nigeria) N. latifolia is used as a chewing stick and as a remedy against stomach ache and tuberculosis. In Ivory Coast infusions and decoctions from stems and roots of N.latifolia are used against malaria by traditional healers. In West and Central Africa N.diderichii is used for its insecticidal and antiparasitic properties. In Gabon, Congo and Nigeria infusions of leaves and bark are employed against fevers. In Kinshasa, DR Congo extracts and preparations together with other plants are applied against diarrhoea. ... Evaluation The main compounds of Nauclea plants are the toxic indole alkaloids and saponines. These are big molecules which only can be solved by organic solvents. Water extract do this only in very little amounts and solve mostly the non-toxic common components of the plant. Therefore alcoholic extracts must be viewed as very toxic. The water extract contains mainly polyphenols and saponines. It is less dangerous. **Because of its toxicity all uses of Nauclea latifolia with men and animals must be advised against** (our emphasis)." Nauclea latifolia (2006)

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add Intr.2

Section 2.a – Origins of WHO involvement and subsequent actions and initiatives

We would have started this trip into WHO-TKM sub-space of the Maze by an appreciative presentation of one of the first (from what we have been able to recover) public intervention in the field, in 1985, when Dr.C.O.Akerele was the Program Manager, Traditional Medicine at the WHO Headquarters in Geneva: "The selection and use of traditional remedies in primary health care", WHO (1986), being the Report of an Inter-Regional workshop held in Bangkok, Thailand, from 25 November to 4 December 1985.

But we have been stopped by a 'no-go' road-sign (this happens in the Maze, as much as on our standard highways!):

[but, can we *copy* a no-*copy* road-sign?]

"The issue of this document does not constitute formal publication. It should not be reviewed, abstracted, quoted or translated without the agreement of the WHO"

We will however slightly but consciously violate the no-copy road-sign:

- by giving you the Internet Link to go and read the Report on the Net by yourselves:

whqlibdoc.who.int/hq/1985-86/TRM_8- 6.1.pdf

and

- by coping for you two very important statements:

"The last decade has seen a considerable growth of popular, official and commercial interest in the use of traditional remedies. For the majority of the world's population these have been and in many instances, are still the only form of treatment readily available. Now, with many Member States responding to the WHO's call for them to give adequate importance to the utilisation of their traditional systems of medicine, traditional practices and remedies are being brought increasingly under the purview of the health services. At the same time, commercial interests have not been slow to recognize and capitalize on the potential financial rewards inherent in this official recognition. There is a widespread belief that remedies of natural origin are harmless and carry no risk to the consumer. Nothing could be further from the truth, foe many of these remedies, often of plant origin, contain potent pharmacological active agents. Even more important may be the use of highly toxic plants, erroneously identified as medicinal herbs."
WHO (1986), Preface

"While folklore information should continue to serve as an indication that a particular plant product is worth investigations, such a claim, no matter how ancient, should not be taken as an absolute guarantee of safety in view of present-day knowledge and technology to assess safety levels. ... The workshop alerted all participants to the importance and necessity of incorporating available information sources and modern toxicology testing into a decisions-making process to ensure safety in the utilization of traditional remedies in general and in national primary health programmes in particular. That many traditional remedies are of therapeutic value, is no longer open to serious doubt. Their use, however, should be governed by the same standards of safety an efficiency as those required of modern pharmaceutical products."
WHO (1986), Conclusions

You will not find many statements in the Maze so well equipped with wisdom! 'Interest for', 'antiquity of recipes and practices', yes; but 'prudently'! And this is the prize you get, when your text and your messages do not use the comfortable 'mantras' of the sort: 'ancestral'!

This praiseworthy attitude of appreciation towards the interest, both medical and social/economical, of TMK for the less-favoured or ill-favoured populations of the UDCountries - but always recalling, at the same time, the need for precaution and for scientific analysis of risks - has been a constant characteristic of the WHO actions, initiatives, meetings and publications during the following years.

Next quotation goes in the same direction:

"We have seen a global resurgence of interest in the use of traditional, complementary and alternative medicine over the last decade. The 56th World Health Assembly formally acknowledged this in May 2003; member states discussed the WHO traditional medicine strategy 2002-2005 and adopted resolution WHA56.31. These documents set out squarely the major challenges: the lack of sound evidence of the safety, efficiency and quality of traditional medicine; the need for measures to ensure proper use of traditional medicines and to protect and preserve traditional and natural resources necessary for their sustainable application; and measures for training and licensing of traditional practitioners."
Bodeker et al (2005), Foreword

WHO (2000): "General guidelines for methodologies on research and evaluation of traditional medicine", is the most complete expression of this attitude of clear-cut interest towards TMK and, at the same time, sane, rational, modern medical practice.

Several useful WHO publications have preceded and followed this '*magnus opus*', and all of them can be found in the Maze:

WHO (1991): "WHO/DANIDA Course on the appropriate methodology for the selection and use of traditional remedies in national health care programmes";

WHO (1997): "Guidelines for the assessment of herbal medicines";

WHO (2001): "Legal status of traditional medicine and complementary /alternative medicine";

WHO (2001a): "Traditional medicine; Better science, policy and services for health development";

WHO (2002): "WHO traditional medicine strategy, 2002-2005";

[unfortunately, we find there again a number of lapses into the horrible 'mantras' terminology and its associated stereotypes; "Allopathic medicine is based on Western culture. Practitioners therefore emphasize its scientific approach, and contend that it is both value free and unmarked by cultural values. TMK therapies have developed rather differently, having been very much influenced by the culture and historical conditions within which they first evolved. Their common basis is an holistic approach to life, equilibrium between the mind, body and their environment, and an emphasis on health rather than on disease. Generally, the practitioner

focuses on the overall condition of the individual patient, rather than on the particular aliment or disease from which he or she is suffering." p.21]

WHO (2002a): "WHO launches the first global strategy on additional and alternative medicine";

WHO (2002b): "Regional strategy for traditional medicine in the Western Pacific";

WHO (2003b): "WHO guidelines on good agricultural and collection practices (GACP) for medicinal plants";

WHO (2004): "WHO guidelines on safety monitoring of herbal medicines in pharmacovigilance systems";

WHO (2009): "Herbal and traditional medicines (WHO Congress on traditional medicine and the Beijing Declaration)";

WHO (2009a): "Report on WHO Interregional workshop on the use of traditional medicine in primary health care (Ulaanbaatar, Mongolia, 23-26 August 2007)";

WHO (2009b): "Continuity abd change; Implementing the third WHO Medicine Strategy 2008-2013", Traditional medicine (p.22);

WHO (2011): "Quality control methods for herbal materials";

WHO (2013): "WHO Traditional medicine 2014-2023";

WHO (2013a): "Traditional medicine; Report by the Secretariat".

We give here a last quotation from a different series of WHO publications (Benchmarks), which we will discuss in depth in Ch.6 and where the methodological demands by WHO seem to be either vanished, or at least well hidden. All the same, as you will see by this brief quotation, something is sometimes left!

"When practised correctly, TMK can help protect and improve citizens' health and well-being. The appropriate use of TMK therapies and products, however, requires consideration of issues of safety, efficacy and quality. This is the basis of consumer protection and is no different, in principle, from what underpins modern medical practice. ...

One of the four main objectives of the WHO traditional medicine strategy 2002-2005 was to support countries to integrate traditional medicine into their own health systems. In 2003, a WHO resolution (WHA56.31) on traditional medicine urged Member States, where appropriate, to formulate and implement national policies and regulations on traditional and complementary and alternative medicine to support their proper use. Further, Member States were urged to integrate TMK into their national health-care systems, depending on their relevant national situations." WHO (2010), passim

We would briefly comment here on a rather perplexing item floating in the TMK subspace of the Maze, namely a surprising WHO foray into the domain of IPRs: the adoption by its 61st General Assembly of a "global strategy and

plan of action on public innovation and intellectual property", with a section dedicated to TMK:

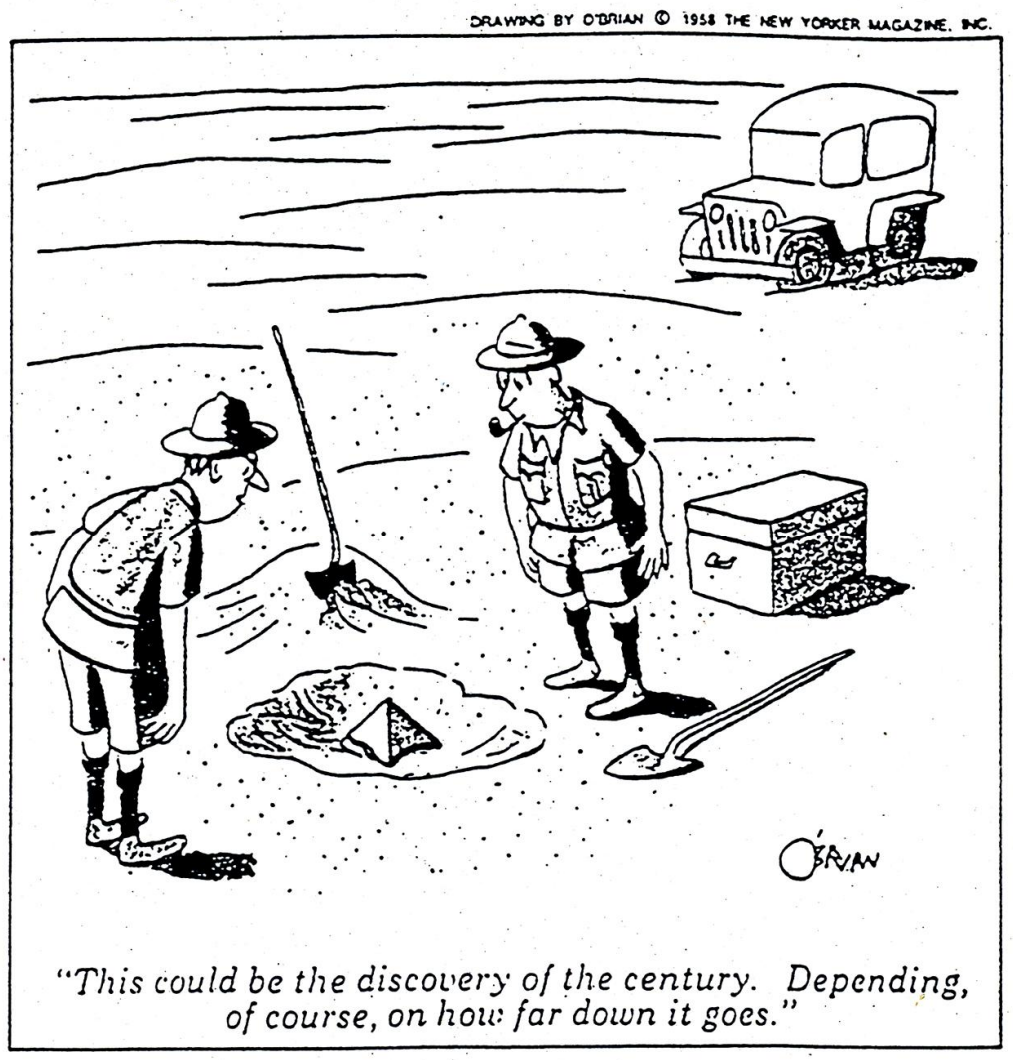
" ... (1.3) encouraging research and development in traditional medicine in accordance with national priorities and legislation, and taking into account the relevant international instruments, including, as appropriate, those concerning traditional knowledge and the rights of indigenous peoples:
(a) set research priorities in traditional medicine
(b) support developing countries to build their capacity in research and development in traditional medicine
(c) promote international cooperation and the ethical conduct of research
(d) support South-South cooperation in information exchange and research activities
(e) support early-stage drug research and development in traditional medicine systems in developing countries."
WHO (2008), passim

where we appreciate, notwithstanding the rather conventional side-remark on 'rights of indigenous people' , the emphasis on 'research and development' instead of the - much more often used - suggestion of 'utilisation'.

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add 2.a Velásquez (2013a)
Velásquez (2015)
Velásquez (2015a)
Velásquez et al (2015)
WHO (1998)

Chapter 3

WILL TMK ALWAYS GO 'FAR DOWN'?


DRAWING BY O'BRIAN © 1958 THE NEW YORKER MAGAZINE, INC.
O'BRIAN
"This could be the discovery of the century. Depending, of course, on how far down it goes."

William *O'Brian*

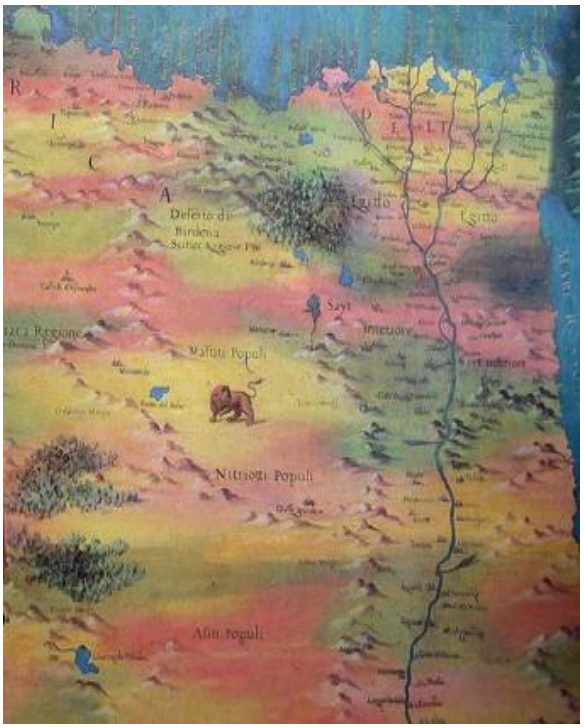
Chapter 3 - TMK in all of its glory and obscurities

Introduction to Chapter 3

While entering now into the Maze sub-space occupied by all sort of documents, reports, images, lists, personal witnesses and data-bases relatives to the whole of TMK (which is a much larger and older sub-space, including the more moderns acquisitions: TMK/WHO (v. 2.a) and TMK/WIPO (v. 2.b)), you will probably feel sensations and reactions similar to those that of old explorers felt when they tried to enter the forests and the deserts of Africa and Asia. There were so many '*historiae*' on what was happening in those huge, apparently empty spaces - men with two heads, men with a dog's head walking around, ... - that the only reasonable and rational information they could either write or draw on their sketchy maps was: "hic sunt leones" , 'here there are lions'. See next two cards for an example:

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3. [entering the wild; card-hic sunt leones]



- "As geographers, Sosius, crowd into the edges of their maps parts of the world which they do not know about, adding notes in the margin to the effect, that beyond this lies nothing but sandy deserts full of wild beasts, unapproachable bogs, Scythian ice, or a frozen sea, so, in this work of mine, in which I have compared the lives of the greatest men with one another, after passing through those periods which probable reasoning can reach to and real history find a footing in, I might very well say of those that are farther off, beyond this there is nothing but prodigies and fictions, the only inhabitants are the poets and inventors of fables; there is no credit, or certainty any farther."

Plutarch, *Parallel Lives* (1st century)

"In ancient maps from the Roman era, African regions about which there was no information were identified by the Latin inscription HIC SUNT LEONES (here there are lions), according to Cesare Marchi's book "Siamo tutti latinisti" (Rizzoli, 1986). The reason for the inscription was to warn the potential traveller of dangers that he may encounter in the unmapped areas."

k.matapp.unimib.it/~marco/Research/Mimetic Methods/index.html

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There are interesting, and even useful, things to be found there, where there are lions:

"... ma per trattar del ben ch'io vi trovai,
dirò dell'altre cose ch'i' v'ho scorte... "

Dante: Divina Commedia, Inferno, I-8,9

We shall therefore try, and give you at least a brief glimpse to what we have found there.

As always, we try and start from a possible, general, more or less neutral definition of TMK (naturally, we should have given an acceptable definition of TMK already at the beginning of Chapter 2; but the TMK/WHO and TMK/WIPO limited context of our search in those two limited spaces provided already an intrinsic, if not explicit, definition):

"[We define Traditional Medical Knowledge] as the sum total of all the knowledge and practices, whether explicable or not, used in diagnosis, prevention and elimination of physical, mental or social imbalance and relying exclusively on practical experience and observation handed down from generation to generation, whether verbally or in writing."
WHO Traditional Medicine Programme. Zhang, 1998 - as quoted by Correa (2002)

or, more exhaustively:

"- Traditional medicine [TMK]
Traditional medicine is the sum total of the knowledge, skills, and practices based on the theories, beliefs, and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness.

- Complementary/alternative medicine (CAM)
The terms "complementary medicine" or "alternative medicine" are used inter-changeably with traditional medicine in some countries. They refer to a broad set of health care practices that are not part of that country's own tradition and are not integrated into the dominant health care system.
Herbal medicines
Herbal medicines include herbs, herbal materials, herbal preparations and finished herbal products, that contain as active ingredients parts of plants, or other plant materials, or combinations.

- **Herbs:** crude plant material such as leaves, flowers, fruit, seed, stems, wood, bark, roots, rhizomes or other plant parts, which may be entire, fragmented or powdered.
- **Herbal materials:** in addition to herbs, fresh juices, gums, fixed oils, essential oils, resins and dry powders of herbs. In some countries, these materials may be processed by various local procedures, such as steaming, roasting, or stir-baking with honey, alcoholic beverages or other materials.
- **Herbal preparations:** the basis for finished herbal products and may include comminuted or powdered herbal materials, or extracts, tinctures and fatty oils of herbal materials. They are produced by extraction, fractionation, purification, concentration, or other physical or biological processes. They also include preparations made

by steeping or heating herbal materials in alcoholic beverages and/or honey, or in other materials.

- **Finished herbal products:** herbal preparations made from one or more herbs. If more than one herb is used, the term mixture herbal product can also be used. Finished herbal products and mixture herbal products may contain excipients in addition to the active ingredients. However, finished products or mixture products to which chemically defined active substances have been added, including synthetic compounds and/or isolated constituents from herbal materials, are not considered to be herbal.

- Traditional use of herbal medicines
Traditional use of herbal medicines refers to the long historical use of these medicines. Their use is well established and widely acknowledged to be safe and effective, and may be accepted by national authorities.

- Therapeutic activity
Therapeutic activity refers to the successful prevention, diagnosis and treatment of physical and mental illnesses; improvement of symptoms of illnesses; as well as beneficial alteration or regulation of the physical and mental status of the body.

- Active ingredients
Active ingredients refer to ingredients of herbal medicines with therapeutic activity. In herbal medicines where the active ingredients have been identified, the preparation of these medicines should be standardized to contain a defined amount of the active ingredients, if adequate analytical methods are available. In cases where it is not possible to identify the active ingredients, the whole herbal medicine may be considered as one active ingredient."
www.who.int/medicines/areas/traditional/definitions/en/

While entering the TMK sub-space of the Maze, you could be impressed by a regularly repeated sentence (that can take, of course, several similar avatar):

"There has been a dramatic surge in popularity of the various disciplines collectively known as traditional medicine (TMK) over the past thirty years. For example, 75% of the population in Mali and 70% in Myanmar depend on TMK and TMK practitioners for primary care, while use has also greatly increased in many developed countries where it is considered a part of complementary and alternative medicine. For instance, 70% of the population in Canada and 80% in Germany have used, in their lifetime, traditional medicine under the title complementary and alternative medicine."
WHO (2010), Preface

This sentence, or one of its avatar, is so frequently used that you would like to find somewhere an - at least tentative - explanation of the trend so described; we have found none; it seems to be given as a cosmological law. Is it, by chance, a new 'mantra'?

It seems to work, and to be so often used, as such; however, we suspect there are hard facts in the background to support it. But why the progressive expansion of a global economy, a global trade system, a global covering by modern medical practice would lead to "a dramatic surge in popularity of the various disciplines collectively known as traditional medicine."? Including the SDDCountries? The world population growth? The

increasing disaffection - all the world over - towards state institutions and standardized behaviour?

We have to leave this question open: some sort of 'mantra' taint seems now to be attached to these repeated declarations about the spreading interest towards TMK; local, professional, obscure interests could partially justify it; we are however open to believe that some very important, if hardly defined, trend is developing in the whole world.

We cannot however start this exploration from the present state of TMK: the 'traditions' of today are not the 'traditions' of ages past, much as their stakeholders would like to define, or feel, them as 'ancestral'. Large parts of their magical rationale, or their explanations based strongly on similitude, of their dependence on stars and planets presence or motion, are lost by now; when not lost, then hidden; to take a sane precaution with respect to Western people ready to provide or promise the money.

We propose therefore to take the same kind of exploratory path we followed in ch.0 - The Introdution, when we were exploring the troubled space of knowledge vs belief vs opinion. And so, we propose first to give some attention to ancient 'materia medica' in classical Egipt, Greece, Rome; in medieval Japan; in Renaissance-modern Europe; in modern China, when her practitioners still follow TCM:

(but remember that, if lucky, we should always find some - perhaps elusive, perhaps evasive - trace of the 'mantra': "(TMK is) relying exclusively on practical experience and observation handed down from generation to generation." While so often it will be too hard to believe that this 'knowledge' derived from experience!)

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3. [ancient Egyptian TMK; card-Ebers papyrus]

"For I have entered into the fire and have come forth from the water, I will not fall into this day's trap. I have spoken (and now) I am young and am *h3.*-Oh Rê, speaks over his (Uraeus) serpent, Osiris, call over what came out of thee! Re speaks over his (Uraeus) a serpent, Osiris calls over what came out of him. Lo, thou hast saved me from everything bad and evil and vicious, from afflictions (caused) by a god or goddess, from dead man or woman etc.-Really excellent, (proved) many times!

Recital on drinking a remedy: Come remedy! Come thou who expellest (evil) things in this my stomach and in these my limbs! The spell is powerful over the remedy. Repeat it backwards! Dost thou remember that Horus and Seth have been conducted to the big palace at Heliopolis, when there was negotiated of Seth's testicles with Horus, and he shall get well like one who is on earth. He does all that he may wish like these gods who are there.-Spoken when drinking a remedy. Really excellent, (proved) many times!

- Internal-medical diseases.

To expel diseases in the belly: *thwj* mixed with beer, is drunk by the man.
Another (remedy) for the belly, when it is ill: cumin 1/2 ro, goosefat 4 ro, milk 20 ro, are boiled, strained and taken.
Another: figs 4 ro, sebesten 4 ro, sweet. beer 20 ro, likewise.
Remedy to open the bowels: milk 25 ro, sycamore-fruit 8 ro, honey 8 ro, are boiled, strained and taken for 4 days.
Another to cause evacuation: honey |, powder of *d3rt* | powder of *s`m* | , are made into suppository.
Remedy for dejection: colocynth 4 ro, honey 4 ro, are mixed together, eaten and swallowed with beer 10 ro or wine 5 ro.
Another: "*3m 4 ro, d3rt* 4 ro, colocynth 4 ro, honey 1 ro, are mixed together and eaten by the man in one day.
Another: honey 4 ro, colocynth 5 ro, date-wine 5 ro, senna 4 ro, oil 5 ro, are boiled and eaten by the man in one day.
Another: wine|, honey |, colocynth |, are strained and taken in one day.
Another: fresh dates | , northern salt | , *Å¡bbt*-fluid, | are mixed with water and placed in a *mht*-vessel; powder of senna is added to it, boiled together and put into a box or a *b3w*-vessel; is eaten by the man when finger-warm and swallowed with sweet beer.
Another: colocynth 4 ro, honey 8 ro, are ground fine, eaten by the man and swallowed with sweet beer.
Another: malachite |, is ground fine, put into bread-dough, made into 3 pills and swallowed by the man and gulped down with sweet beer.
Another remedy to open the bowels: *w3m* | , *inb* | , *srj* of *ksbt* | , honey | , silphium (?) | , are mixed together and eaten for 4 days.
Another: *tj'm* | , *d3rt* | , cumin | , figs | , sebesten | , oil | , are mixed together and eaten by the man.
Another to empty the belly: cow's milk |, sycamore-fruit |, honey | , are ground fine, boiled and taken for 4 days.
Another for the belly: *hmw* of *k3k3* 8 ro, dates *tf* 2 Â½ ro, rush-nut 1 ro, *kf3* of *h3sjt* 1 ro, coriander 1 ro, thick beer 10 ro, remains during the night in the dew, is strained and taken for 4 days.

Ebers papyrus, passim
web.archive.org/web/20050226100008/http://www.macalester.edu/~cuffel/ebers.htm

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3. [ancient Egyptian TMK; card-Ebers papyrus notes]

"THE PAPYRUS EBERS

THE GREATEST EGYPTIAN MEDICAL DOCUMENT

TRANSLATED BY *B.EBBELL*, LATE COUNTY MEDICAL OFFICER

LEVIN & MUNKSGAARD, EJNAR MUNKSGAARD, COPENHAGEN 1937

'For I have entered into the fire and have come forth from the water, I will not fall into this day's trap. I have spoken (and now) I am young and am *h3*.-Oh Rê, speaks over his (Uraeus) serpent, Osiris, call over what came out of thee! Re speaks over his (Uraeus) serpent, Osiris calls over what came out of him. Lo, thou hast saved me from everything bad and evil and vicious, from afflictions (caused) by a god or goddess, from dead man or woman etc.- Really excellent, (proved) many times!'

The manuscript

The papyrus was written in about 1500 BC, but it is believed to have been copied from earlier texts, perhaps dating as far back as 3400 BC. Ebers Papyrus is a 110-page scroll, which is about 20 meters long. Along with the Kahun Gynaecological Papyrus (circa 1800 BC), the Edwin Smith papyrus (circa 1600 BC), the Hearst papyrus (circa 1600 BC), the Brugsch Papyrus (circa 1300 BC), the London Medical Papyrus (circa 1300 BC), the Ebers Papyrus is among the oldest preserved medical documents. The Brugsch Papyrus provides parallel passages to Ebers Papyrus, helping to clarify certain passages of the latter.

Medical knowledge

The Ebers Papyrus is written in hieratic Egyptian writing and preserves for us the most voluminous record of ancient Egyptian medicine known. The scroll contains some 700 magical formulas and remedies. It contains many incantations meant to turn away disease-causing demons and there is also evidence of a long tradition of empirical practice and observation. The papyrus contains a "treatise on the heart". It notes that the heart is the center of the blood supply, with vessels attached for every member of the body. The Egyptians seem to have known little about the kidneys and made the heart the meeting point of a number of vessels which carried all the fluids of the body — blood, tears, urine and semen. Mental disorders are detailed in a chapter of the papyrus called the Book of Hearts. Disorders such as depression and dementia are covered. The descriptions of these disorders suggest that Egyptians conceived of mental and physical diseases in much the same way. The papyrus contains chapters on contraception, diagnosis of pregnancy and other gynecological matters, intestinal disease and parasites, eye and skin problems, dentistry and the surgical treatment of abscesses and tumors, bone-setting and burns."

www.crystalinks.com/egyptmedicine.html

Colocynth [bitter cucumber - Citrullus colocynthis] is still used in homeopathy:

"Often indicated in the transition season when the air is cold, but the sun is still powerful enough to heat the blood. Disinclined to talk, to see friends, impatient, easily offended, anger with indignation; colic or other complaints as a consequence."

International Academy of Classical Homeopathy

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3. [ancient Greek-Roman TMK; card-Pliny the Elder]

"Like the sabine herb [Junipera foetidissima or Junipera sabina] is the plant called selago [Lycoponium selago or Hyperzia selago]. It is gathered without iron with the right hand, thrust under the tunic through the left arm-hole, as though the gatherer were thieving. He should be clad in white, and have bare feet washed clean: before gathering he should make a sacrificial offering of bread and wine. The plant is carried in a new napkin. (XXIV.lxii)

Of these [hellebores] the black kind [Helleborus niger] they call melampodium; with it they fumigate and cleanse houses, sprinkling it on sheep, and adding a formal prayer. This kind is gathered with even greater formalities. First a circle is drawn round it with a sword; then the man who is going to cut it looks at the East with a prayer that the gods will grant him permission to do so. He also keeps on the look-out for a flying eagle - for generally one is present when men cut - and if an eagle flies near, it is a sign that the gatherer will die in that year. (XXV.xxi)

Animals too have discovered plants, and among the chief is the chelidonia [Chelidonium majus]. For by means of it swallows cure the eyes of the chicks in the nest, and restore the sight, as some hold, even when the eyes have been torn out. The juice is extracted while the plants are flowering, and it is gently boiled down with Attic honey in a copper vessel over hot ashes, being a sovereign remedy for dimness of vision (XXV.l)... Those who have been bitten [by snakes] are given chelidonia in wine (XXV.lv) ... Root of chelidonia is crushed in vinegar and kept in the mouth (XXV.cvii) ... For scrofulous sores are prescribed plantain [Plantago major] and the great celandine [= chelidonia] with honey and axel-grease. (XXVI.lxxxvii)

Erigeron [Senecio vulgaris is called by us Romans senecio. If a line is traced round it with an iron tool before it is dug up, and if one touches a painful tooth with the plant three times, spitting after each touch, and replaces it into its original ground so as to keep it alive, it is said that the tooth will never cause pain thereafter. ... Some have given it with wine for jaundice, and as a cure for all complaints of the bladder, heart, and liver. (XXV.cvi)

Superficial abscess is cured by panaces... Those with experience have assured us that it makes all the difference if, while the patient is fasting, the poultice is laid upon him by a maiden, herself fasting and naked, who must touch him with the back of her hand and say: 'Apollo tells us that a plague cannot grow more fiery in a patient if a naked maiden quench the fire.' And with her hand so reversed she must repeat the formula three times, and both must split on the ground three times. (XXVI.lx)

The greater the number of plants waiting to be described, the more one is led to revere the careful research of the ancients and their kindness in passing on the results. (XXVII.i)

But who could revere enough the diligent research of the ancients? It is established that of all poisons the quickest to act is aconite [Aconitum anthora or Aconitum napellus] and that death occurs on the same day if the genitals of a female creature are but touched by it." (XXVII.ii)

Pliny the Elder, passim

Here the 'mantra': "relying exclusively on practical experience and observation" can be accepted by nobody; Pliny the Elder was just and only copying from Greek texts through the doubtful translation of Greek-Roman slaves - that often misunderstood the original text and/or its rendering into Latin; but the original Greek text contained already its share of fantasy! And Pliny had a 'mantra' of his own: "The greater the number of plants waiting to be described, the more one is led to revere the careful research of the ancients and their kindness in passing on the results."

(should ever the health insurances refund the expenses incurred during the therapy suggested by Pliny the Elder in the case of 'superficial abscesses', the statistics on the frequency of this superficial ailment would immediately explode!; and think of the "careful research"!)

There is however a lesson to be learned when dealing with Pliny the Elder; about how easily classical 'old wise people' and 'ancient people' could be overrated:

"Across the globe, farmers, craftsmen, and healers have carefully observed the phases of the moon, especially while planting, harvesting, or collecting plants. Gaius Plinius Secundus, or Pliny the Elder (23–79 CE), was a well known author and respected naturalist who wrote *Naturalis Historia*, the most comprehensive study of natural history to survive from the Roman Empire. During his life (he died suddenly during the eruption of Mt. Vesuvius), he advised Roman farmers to pick fruit at the full moon for the market, as it would weigh more, and pick at the new moon for personal consumption, as that fruit would store better. Pliny also recommended that lumber trees be cut at the new moon. Following this practice, King Louis XIV passed a royal order during his reign that felling of wood should only occur during a waning moon (the period of time after the full moon) between the falling of leaves and the new growing season."

Cole et al (2010), p.1

We have recently found out that, 2000 years later, the importance of the way people are dressed while performing sacred, or divination, or ritual, acts should still be emphasized:

Pliny the Elder (AD 23-79) tells us: "He should be clad in white"; and The Old Farmers Almanach Companion Newletter, (AD 2013, August 20) tells us: "Plant cucumbers while you are wearing your pajamas, on the first day of May, before sunrise, and no bugs will eat them" (there is also a suggestion of 'ritual stealing': "If a cow has indigestion, feed her an onion sandwich, stolen bread, or bread taken in silence from a neighbor").

'The 2014 Old Farmer's Almanac' can be bought from Almanac.com; 'The Old Farmers Almanach Companion Newletter' provides useful and instructive reading. Their philosophy: "Some old-time farming beliefs [note: not 'knowledge'!] seem far-fetched today - but others are based on generations of practical experience [note: not 'ancestral'!]. And they add a deep quote, attributed to Maria Leach: "(all are examples of) the inextinguishable hope that all that is wrong in the world can somehow be put right".

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3. [Japonese TMK; card-Heike Monogatari)]

"At once the regent [Moromichi] fell gravely ill, apparently stricken by Sanno, the divinity of the [Hiei] Mountain. In intense distress, his mother, a very great lady, disguised herself as a woman of the people and confined herself on retreat at the Hiyoshi Shrine. She prayed there for seven days and nights and announced the following vows. She offered one hundred open-air *dengaku* dances; one hundred devotional processions costumes; one hundred horse races, wrestling bouts, and mounted archery matches; one hundred discourses on the Sutra of the benevolent King; one hundred Medicine King images one a half handbreadths tall; and life-size images of the Medicine King, Shakyamuni, and Amida. (1:14)

From the very first day of Lord Kiyomori illness, nothing passed his lips, non even water, and his body burned like fire. The heat within twenty-five or thirty feet of where he lay was unbearable. ... King Emma had sentenced Kiyomori to the depths of Muken ...

To holy temples and holy shrines they offered with reckless abandon gold and silver, the seven treasures, even horses, saddles, and armour, bows and arrows, swords and daggers, together with fervent prayers, but none of this made an difference. ...

He (Lord Kiyomori) writhed in agony, gasping for breath, and finally died in convulsions." (6:7)

Heike Monogatari

Who would have thought that the honourable but venal Buddhist monks of medieval Japan (XII-XIII C.) would have used their ancestral TMK and try and heal the Noble Regent or Lord Kiyomori, just because of the rich presents by the powerful Taira family: dances, horse races, archery matches, ... or even the life-size image of their patron, the 'Medicine King', Shakyamuni?

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3. [European TMK: card-Loeuillart-d'Avrigni (1821)]

- "Symphytum officinale [Grande consoude]:

La pharmacie prépare avec la [racine de la] grande consoude une eau distillée, un sirop. Remède pour les hémoptisies, les pertes, les diarrhées, les ulcères internes. (p.96)

- Conium maculatum [Ciguë]

La pharmacie prépare avec [les feuilles] de ciguë une poudre, un extrait, une huile par infusion. Remède pour les affections nerveuses, les maladies de peau, les obstructions, etc. (pp.116-117)

- Chelidonium majus [Grande chélidoine]
"La pharmacie prépare avec cette plante une eau distillée. Remède pour les maladies de la peau, les fièvres d'accès, les obstructions, l'ictère, les affections du système lymphatique, etc. (p.181)

- Hypericum perforatum [St-John's worth]

La pharmacie prépare avec cette plante une huile par infusion, et la fait entrer dans l'eau vulnéraire, la thériaque, l'emplâtre opodeldoch, etc. Remède pour l'atonie des membranes muqueuses. (p.229)

- Digitalis purpurea [Digitale pourprée]

La pharmacie prépare un extrait et une poudre de digitale. Remède pour les affections du système lymphatique, rachitis, scrophules, phtisie, etc. (p.207) "

Loeuillart-D'Avrigni (1821), passim

With Loeuillart-d'Avrigni we are no more in the Dark Ages (the book whence we quote having been published in 1821), but much of the old 'natural philosophy' still lingers around the kind of TMK and scholarly taught 'materia medica' of the age. We have extracted only a few 'recipes' where the real, grave dangers presented by the use of the plants suggested is totally ignored by the author; in particular, no dose is ever suggested; the use of this book in 'self-medication' would have been catastrophic!

We need to introduce briefly the next 3 cards; they concern not a practitioner of TCM, but a 'patient' or better 'the son of a patient' of TCM, at the beginning of last century. It happens so rarely, that we can have the honest words of a victim of an ideological and social scourge: TCM as applied in his youth, in his village, upon his family. What in general you find in the Maze, are the words of someone defending, in good or bad faith, his or her profession, practice, knowledge. Sometimes, we have plenty of reasons not to believe in what is claimed; to the words of Lu Xu, one of the most sincere, politically engaged, coherent Chinese writer, we can easily believe.

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3. [Chinese TMK; card-Lu Xun (1919)]

"Looking at his lantern, Old Chuan saw it had gone out. He patted his pocket — the hard packet was still there. Then he looked round and saw many strange people, in twos and threes, wandering about like lost souls. However, when he gazed steadily at them, he could not see anything else strange about them. Presently he saw some soldiers strolling around. The large white circles on their uniforms, both in front and behind, were clear even at a distance; and as they drew nearer, he saw the dark red border too. The next second, with a trampling of feet, a crowd rushed past. Thereupon the small groups which had arrived earlier suddenly converged and surged forward. Just before the cross-road, they came to a sudden stop and grouped themselves in a semi-circle. ...

'Hey! Give me the cash, and I'll give you the goods!'. A man clad entirely in black stood before him, his eyes like daggers, making Old Chuan shrink to half his normal size. This man thrust one huge extended hand towards him, while in the other he held a roll of steamed bread, from which crimson drops were dripping to the ground. Hurriedly Old Chuan fumbled for his dollars, and trembling he was about to hand them over, but he dared not take the object. The other grew impatient and shouted: 'What are you afraid of? Why not take it?'. When Old Chuan still hesitated, the man in black snatched his lantern and tore off its paper shade to wrap up the roll. This package he thrust into Old Chuan's hand, at the same time seizing the silver and giving it a cursory feel. ...

When Old Chuan reached home, the shop had been cleaned, and the rows of tea-tables shone brightly; but no customers had arrived. Only his son sat eating at a table by the wall. Beads of sweat stood out on his forehead, his lined jacket clung to his spine, and his shoulder blades stuck out so sharply, an inverted V seemed stamped there. At this sight, Old Chuan's brow, which had been clear, contracted again. His wife hurried in from the kitchen, with expectant eyes and a tremor to her lips: 'Get it?' - 'Yes'

Little Chuan picked up the black object and looked at it. He had the oddest feeling, as if he were holding his own life in his hands. Presently he split it carefully open. From within the charred crust a jet of white vapour escaped, then scattered, leaving only two halves of a steamed white flour roll. Soon it was all eaten, the flavour completely forgotten, only the empty plate being left. His father and mother were standing one on each side of him, their eyes apparently pouring something into him and at the same time extracting something. His small heart began to beat faster, and, putting his hands to his chest, he began to cough again. 'Have a sleep; then you'll be all right', said his mother. ...

'This is a guaranteed cure! Not like other things!', declared the heavy-jowled man. 'Just think, brought back warm, and eaten warm!'. 'Yes indeed, we couldn't have managed it without Uncle Kang's help' The old woman thanked him very warmly. 'A guaranteed cure! Eaten warm like this. A roll dipped in human blood like this can cure any consumption!'. ...

That grave was directly opposite Little Chuan's, separated only by the path. As Old Chuan's wife watched the other woman set out four dishes of food and a bowl of rice, ... she thought: 'It must be her son in that grave too'. The older woman took a few aimless steps and stared vacantly around."

Lu Xun (1919), passim

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3. [Chinese TMK; card-Lu Xun (1922)]

"My trouble is that I cannot forget completely, and these stories have resulted from what I have been unable to erase from my memory. For more than four years I used to go, almost daily, to a pawnbroker’s and to a medicine shop. I cannot remember how old I was then, but the counter in the medicine shop was the same height as I, and that in the pawnbroker’s twice my height. I used to hand clothes and trinkets up to the counter twice my height, take the money proffered with contempt, then go to the counter the same height as I to buy medicine for my father, who had long been ill. On my return home I had other things to keep me busy, for since the physician who made out the prescriptions was very well known, he used unusual drugs: aloe root dug up in winter, sugar-cane that had been three years exposed to frost, twin crickets ['they must be an original pair, from the same burrow'], and ardisia ['ardisia' is a shrub which grows at the foot of trees deep in the mountain, with small red berries like coral beads, usually known as 'never-grow-up']. All of which were difficult to procure. But my father’s illness went from bad to worse until he died."

Lu Xun (1922), passim

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3. [Chinese TMK; Lu Xun (1926)]

- "I had dealings with this famous physician for two whole years, because he came every other day to attend my father. Although by that time very well known, he had not yet more money than he knew what to do with; still, his fee was already one dollar forty a visit. ...

He probably was unique in some respects. It was generally agreed that his prescriptions were unusual. I know nothing about medicine: what struck me was how hard the 'adjuvants' were to find. First I had to buy the medicine, then look for the adjuvant. He never used such a common ingredient as two slices of fresh ginger, or ten bamboo leaves minus the tips. At best it was reed roots, and I had to go to the river to dig them up; and when it came to sugarcane which had seen three years of frost, I would have to search for two or three days at the least. ...

But what else could we do? It was a fact that the other well known doctor in our town was Chen Lianhe. So the next day we engaged his services. Chen Lianhe's fee was also one dollar forty. But whereas our first well known doctor's face was plump and round, his was plump and long: this was one great difference between them. Their use of medicine was different too. Our first well-known doctor's prescriptions could be prepared by one person, but no single person could cope satisfactorily with dr.Chen's because his prescriptions always included a special pill or powder or an extra-special adjuvant. Not once did he use reed roots or sugar-cane that had seen three years of frost. Most often it was 'a pair of crickets', with a note in small characters at the side: 'they must be an original pair, from the same burrow'. So it seems that even insects must be chaste, if they marry again after losing their mates the forfeit even the right to be used as medicine. This task, however, presented no difficulties to me. In Hundred-Plant Garden I could catch ten pairs easily. I tied them with a thread and dropped them alive into the boiling pan, and that was that. But then there were 'ten ardisia berries'. Nobody knew what these were. ...

Last of all I remembered that distant great-uncle of mine: 'ardisia' was a shrub which grows at the foot of trees deep in the mountain, with small red berries like coral beads, usually known as 'never-grow-up'. Now we had the adjuvant, but there was still a special pill: broken-drum bolus. Broken-drum boluses were made from the leather of worn-out drums. Since one name for 'dropsy' is 'drum-tight', the leather from worn-out drums can naturally cure it. ...

That ended my dealings with dr.Chen Lianhe: but I sometimes saw him in the street carried swiftly by in his fast sedan-chair with three carriers. ... 'Father!!!' - I went on calling until he breathed his last."

Lu Xun (1926), passim

What can we say, in conclusion, after this too rapid excursus through the witnesses of past and fairly recent presentations of the philosophy, ideology and practices of TMK? We shall pursue our trip in what follows, in Secton 3.a dedicated to TMK in the UDCountries, and point Section 3.b dedicated to TMK in our SDDCountries. But something general, and surely not optimistic and satisfactory about the theories and practices of TMK with which we have reached some familiarity, is that ideological, ritual and magical (called often 'spiritual') frames of mind, or call them 'world view', interfered always heavily with the so much acclaimed but apparently absent TMK **"relying exclusively on practical experience and observation."**

What we find or perhaps infer from the construction of the world view that underlies TMK, is that the historical, cultural and methodological interest in the theory of 'similitudes' (down to the almost farcical modern homeopathic 'philosophy') has blocked too often a more rational analysis of the phenomena of disease and healing:

"But how is experience to weave its way through this labyrinthine network of correspondences and hidden similitudes? How are nature's 'secrets' to be discovered? The answer is that nature puts a mark on things: the outward appearances of things provides clues or signs pointing to the properties that would otherwise be totally hidden from view. These 'signatures', or visual likenesses, enable us to know, for example, that the herb *scorpius*, which resembles the scorpion, is a good remedy against the scorpion's sting; that the milky galactites, powdered and sprinkled over the back of a goat, will cause the goat to give milk plentifully for her young; or that the wine-colored amethyst prevent drunkenness. Such signatures were not merely coincidences but were divinely ordained. They were woven into the fabric of nature, giving it meaning and intelligibility. Without signatures, nature would be baffling and impenetrable."

Della Porta: Magiae Naturalis (1558), as quoted by Eamon (1994), p.214

see for instance:

St.John's wort (Hypericum perforatum)
- the leaves contain myriad of **very small transparent bubbles**, see by transparency they can make you think of the alveoles of lungs; and so, the proposed healing properties: bleeding, **congestion of the lungs**

Liverwort (Anemone hepatica)
- the leaves have **three lobes and are fleshy and hairless**, they make you tink of the liver; and so the proposed healing properties: **liver complaints**

Instead of respecting tradition, instead of forcing ourselves to bow to the assumed, but never proved **"creation of TMK relying exclusively on practical experience and observation"**, we think that we should need to learn and scream, as in the old story of **'the king is naked!'**

"Never emperor's clothes were more admired.

'But he has nothing on at all', said a little child at last. 'Good heavens! listen to the voice of an innocent child', said the father, and one whispered to the other what the child had said. 'But he has nothing on at all', cried at last the whole people. That made a deep impression upon the emperor, for it seemed to him that they were right; but he thought to himself, 'Now I must bear up to the end'.

H.C.Andersen, 1837

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add Intr.3

Section 3.a - TMK in the under-developing countries (UDCountries)

"In order to guarantee better health and longer life for the working people, we should intensify medical research work to develop traditional Korean medicine, along with modern medicine, and to work out a theoretical systematization of the folk cures bequeathed to us by our ancestors."
Kim Il Sung, as quoted by Choe Thac Sop (1995), p.1

In spite of the unquestionable authority of Kim Il Sung on *materia medica*, the so often repeated automatic confidence in "the folk cures bequeathed to us by our ancestors" is another example of a dangerous 'mantra': implying something like 'old = correct'; 'old = confirmed by age old experience', etc. We have absolutely no reason to believe that:

- for an 'old tradition', to be 'old' (see ch.0 on the 'mantra': 'ancestral'; and ch.7 on the proliferation of 'invented traditions');

- for an 'old tradition', even when old, to be correct and useful and safe;

- for an 'old tradition', even when old, to having been tested by some form of experiment, or confirmed by some sort of experience in the long term.

This '*provision*' on our part does not imply that the huge Maze sub-space: 'TMK/UDCountries' contains only fabulous recipes, magic formulae, ritual associations between plants and health and healing.

On the contrary, we will encounter there, for instance, the reports of a day-long meeting organized by WHO-Regional Office for Africa and published by the ***African Health Monitor***, very briefly summarised in next card:

3.a [TMK - African Traditional Medicine Day; card-AHM (2010)]

"In 2008 WHO and its Member States, celebrated 30 years of the Alma-Ata Declaration and Member States adopted the Ouagadougou and Algiers Declarations which, among other things, underscored the role of traditional medicine in health systems and the need to produce scientific research findings in support of traditional medicine. In response to all these resolutions and declarations, some countries have promoted research through the establishment of national institutes. These institutes and centres have intensified their efforts to produce scientific evidence on safety, efficacy and quality of traditional medicines, which may have public health importance particularly in the treatment of malaria, opportunistic infections of people living with HIV/AIDS, diabetes, hypertension and sickle-cell disease. Preliminary results from these evidence-based studies are promising.

A number of countries have developed national herbal pharmacopoeias to document medicinal plants that have been found to be effective and to further ensure their safety, efficacy and quality. The West African Health Organization in collaboration with WHO Regional Office for Africa is developing a West African Pharmacopoeia, which will contain monographs covering some of the medicinal plants common to all the countries of the sub-Region. Some other countries produce small-scale traditional medicines from wild crafted or cultivated medicinal plants. These traditional medicines are registered with national medicines regulatory authorities and some of these medicines are included in national essential medicines lists. ...

Protection of traditional medicine knowledge is a very important area and Member States therefore need to develop mechanisms within the framework of the global strategy and plan of action on public health, innovation and intellectual property adopted by the 61st World Health Assembly in 2008. Effective implementation of the plan, which charts a roadmap for research and protection of traditional medical knowledge, among others, will enable Member States to document, preserve, protect and further exploit the social benefits and potential of African traditional medicine."

Gomes Sambo (2010), passim

see also, in AHM (2010):

An overview of the traditional medicine situation in the African Region
Ossy MJ Kasilo, J.M. Trapsida, Ch.Ngenda Mwikisa and P. S. Lusamba-Dikassa

An overview of traditional medicine in ECO WAS Member States
Kofi Busia and Ossy MJ Kasilo

Collaboration between traditional health practitioners and conventional health practitioners: Some country experiences
Kofi Busia and Ossy MJ Kasilo
Intellectual property approaches to the protection of traditional knowledge in the African Region
E. KA Sackey and Ossy MJ Kasilo

ahm.afro.who.int/special-issue14/ahm-special-issue-14.pdf

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where we can read about some sincere effort to go beyond the traditional semi-ritual, semi-magical approaches to herbs and health.

And we will find a very long, detailed, thoughtful analysis of the possible and desirable collaboration between 'Western doctors' and 'traditional healers' for the prevention of blindness:

P.Courtright et al (2000): Collaboration with African traditional healers for the prevention of blindness.

The following example (from Cuba) shows also how a conscious appreciation of the potentialities offered by the available large spectrum of biological resources can be combined, perhaps with some effort, with the need of scientific rigour:

"Las plantas contienen numerosas sustancias no nutritivas con actividad biológica, lo que ha sido motivo de especial atención por sus efectos antivirales y antitumorales; la antimutagenicidad de estos compuestos es una de las temáticas que más se aborda en la actualidad. ... Entre los mecanismos propuestos como responsables de esta actividad se encuentran su posibilidad de captar radicales libres, la inhibición de la tasa metabólica de los carcinógenos por las enzimas de fase 1, así como la inducción de enzimas antioxidantes y enzimas destoxificadoras. En Cuba el extracto acuoso de la corteza de *Mangifera indica* L. (VIMANG) rico en polifenoles, se utiliza como suplemento nutricional. Además, VIMANG mejora la calidad de vida en pacientes con cáncer, así como en afecciones relacionadas con trastornos respiratorios, gastrointestinales y dermatológicos. Por la composición química del VIMANG y los resultados fitoterapéuticos, se piensa que sería interesante el estudio de la actividad antigenotóxica del extracto por el ensayo cometa y el ensayo de micronúcleos en eritrocitos, y su posible relación con la capacidad de modular la glutatión peroxidasa (enzima antioxidante) y las glutatión-S-transferasa (enzima destoxificadora) en el hígado."
Cancino Badías et al (2001), p.48

To give a very partial idea of the richness of both the biological resources available, and of the literature relative to them, we have prepared a list of the books on this theme available at the WHO and UN Libraries in Geneva:

3.a [List of books on medicinal plants; card-books on medicinal plants]

(with indication of the Geneva libraries where they can be found)

Abdallah Adly (1982): Abdallah Adly (ed.): The history of medicinal and aromatic plants. Karachi: Hamdard Foundation, 1982. (WHO, QV 766 82In)

Atti (1981): Atti des II Seminario internazionale sulle Piante medicinali ed aromatiche. Città di Castello: Aboca Erbe, 1981. (WHO, QV 766, 81Se)

AVF (2010): Académie vétérinaire de France. Rapport sur l'usage des préparations à base de plantes, 30 juin 2010.

Ayensu (1978): E.S.Ayensu: Medicinal plants of South West Africa [Ghana]. Algonko: Reference P., 1978. (WHO, QV 770 HA21 78Ag)

Bellakhdar (1997): La pharmacopée marocaine traditionnelle; Médecine arabe ancienne et savoirs populaire: Ibis Print, 1997. (WHO, QV 766 97BE)

Brüschweiler (1997): S.Brüschweiler: Plantes et savoirs du Val d'Anniviers; Enquêtes ethnobotaniques liées à la connaissance des plantes utilitaires du Val d'Anniviers. Neuchâtel: Université de Neuchâtel, Institut de botanique, 1997. (Geneva-Jardin Botanique)

Brüschweiler (1999): S.Brüschweiler: Plantes et savoirs des Alpes; L'exemple du val d'Anniviers. Sierre: Monographic, 1999. (Ge-Jardin Botanique)

Chevallier (1996): A.Chevallier: Encyclopedia of medicinal plants. New York: DK Publishing, 1996.

CMV (1993): A.Cerutti, M.Cerutti e G.Vigolo: Botanica medica, farmaceutica e veternaria; Con elementi di botanica generale. Bologna: Zanichelli, 1993.

Craker et al (1992): L.E.Craker and J.E.Simon (eds.): Herbs, spices, and medicinal plants; Recent advances in botany, horticulture and pharmacology, volume 1. Binghamton: Haworth, 1992.

Fatumbi Verger (1995): P.Fatumbi Verger (Fatumbi Ojuobá): Ewe; The use of plants in Yoruba society. São Paulo: Companhia das letras, Oderbrecht, 1995. (WHO QV 770 HN5 95Ve),

Fortin et al (1997): D.Fortin, Moduo Lê et G.Maynart: Plantes médicinales du Sahel. Dakar: Enda Ed., 1997. (WHO, QV 770 HA21 90Fo),

Ganioz-Zufferey (2002): J.Ganioz-Zufferey: Plantes et savoir ancestral, Val d'Anniviers. Sierre: Ed.à la Carte, 2002.

Gupta (1995): M.P.Gupta (ed.): 270 plantas medicinales IberoAmericanas. Santafé de Bogotá: CYTED, 1995. (WHO, QV 766, 95DO),

Jansen et al (1983): P.C.M.Jansen e O.Mendes: Plantas medicinais; Seu uso tradicional em Moçambique, vol.1. Maputo: Ministêrio de Saúde, 1983. (WHO, QV 770 HM7 83Ja v1),

Jansen et al (1991): P.C.M.Jansen e O.Mendes: Plantas medicinais; Seu uso tradicional em Moçambique, vol.4. Maputo: Ministêrio de Saúde, 1991. (WHO, QV 770 HM7 83Ja v4),

JMAPS (2000): Journal of medicinal and aromatic plant sciences. Luchnow: CIMAP, 2000 (WHO, QV 766, 2000NA)

Lebarbier et al (2004): M.Lebarbier et I.Andreesco (eds.): Plantes et tradition orale. Paris: Publications Langues'O, 2004.

Lee (2002): M.R.Lee: Plants against malaria; Part I: Cinchona or the Peruvian bark. J.R.Coll.Physicians Edinb., vol.32, 2002, pp.189-196.

Linton (2012): P.Linton: Traditional medical knowledge; Experience of the Cree Nation in the development of research agreement for the anti-diabetic plants research project. (Geneva, IGC 21st session, April 16, 2012).

Mamou (2008): Les forces du Tamarinier et de 120 arbres guérisseurs du Mali et de tout le Sahel; Guide thérapeutique classé par maladies. Kaolack (Sénégal): Editions Mamou, 2008.

mediCuba (2006): Cuba produit des médicaments à base de plantes, par exemple le Vimang. mediCuba, bulletin no.17, septembre 2006.

Oliver-Bever (1986): B.Oliver-Bever: Medicinal plants in tropical Africa. Cambridge (UK): Cambridge U.P., 1986. (WHO, QV 770, HA21 86Ol),

Penso (1987): G.Penso: Piante medicinali nella terapia medica; Compendio di farmacognostica pratica per medici e farmacisti. Milano: Organizzazione editoriale medico-farmaceutica, 1987. (WHO, QV 766, 87Pe),

Perry (1980): L.M.Perry: Medicinal plants of East and South-East Asia; Attributed properties and uses [India excluded]. Cambridge (USA): MIT P., 1980. (WHO, QV 770 JA1 80Pe),

Triponez (1957): J.Triponez: Trésors au bord du chemin; Manuel d'herboristerie moderne. Nyon: Cherix et Filanosa, 1957.

WHO (2009): Herbal and traditional medicines (WHO Congress on traditional medicine and the Beijing Declaration). WHO Drug Information, vol.23, no.1, 2009, pp.8-11.

To try and satisfy the promise made in our Introduction, we shall keep open eyes on the material that can be found most frequently in this sub-space of the Maze. See, for instance, this sort of statements:

"For instance, the *per capita* consumption of TMK products in Malaysia is more than double the consumption of modern pharmaceuticals. TMK is even significant in relatively advanced developing countries such as South Korea, where the *per capita* consumption of TMK products is about 36% more than modern drugs."

Balasubramanian (1997), as quoted by Correa (2002)

This so frequently repeated 'fact', which tends to develop into a 'mantra', is used too often to justify, in some way, the interest and respect we should feel for TMK; but, of course, the consumption - or even the increasing consumption - of herbal and other traditional TMK drugs is in no way a proof of their efficacy; in particular, in those densely populated regions of the world where they are the only medical or paramedical treatment available.

And we feel that it is a bit too easy, a sort of doubtful shortcut, to infer the efficacy of TMK (the whole of it!) from this sort of quotation:

"It has been noted, for instance, that TMK has been more effective than modern medicine in addressing some diseases, such as certain viral diseases (Xie, 2002, p.127)."

Correa (2002), p.8

(which component of TMK, which specific item, in which countries and in which context? which school of TMK? the paper quoted by Correa is: Xie, Z: 'Harmonization of traditional and modern medicine', in R.Chaudhury and U.M.Rafei (Eds.): Traditional Medicine in Asia. New Delhi: WHO, Regional Office for South-East Asia, 2002; but who will be able, and who will have the time, to try and find and read it, and check and judge the validity of the experiments and the arguments of M.Xie? how can Correa collaborate the 'more effectiveness' of TMK starting from such cloudy premises?)

And what to say of statements of this sort:

"The aim of this book, is to show what types of plants are used in Yoruba pharmacology and for what types of medicinal or magical formulae they are used. The medicinal virtues and values of a plant are not easy to find out, because rarely is a plant used on its own: in general, formulae are made up of three to six different plants. A plant may be compared to a letter of a word. On its own it insignificant, but when joined with other letters it contributes to the meaning of the world. ...

If I take the example of an *aforàn*, 'to make people forget a case in court', I will find it is an *awúre* (beneficent work) for one of the parties but an *àbìlù* (evil work) for the other. In this example, a certain leaf is required to 'kill' the voice inside a witness and another leaf may be used to 'open the month but not allow it to speak'. This seems clearly an evil work, but if one realizes that this remedy is required by a person who needs to win a case in court and must neutralize the false testimony of an enemy, it may be classified among the beneficent works or among those which

render protection against evil work (*ìdáàbòbò*). It is also difficult to trace a line of demarcation betweem scientific knowledge and magic. Thia stems from the importance, in a traditional oral culture such as that of the Yoruba, given to the notion of an incantation (*ofò*) spoken during the preparation or application of the medicinal formulae (*oògùn*). ... It is the knowledge of the *ofò* which is essential, as it contains the 'power-to-alter' the formula's pharmacological effects. ... I have not personally made experiments to ascertain the efficacy of the action of these plants, as this work can be more properly undertaken by a specialist in pharmacology."

Fatumbi-Verger (1995), passim

If we read this sort of argument, as made for instance by Novartis about their last blockbuster pharmaceutical molecule; assuring us that, on the traditional leaflet of cautions about the use of the drug, we will also find the corresponding *ofó* to sing in order to obtain the desired, correct 'pharmacological effect' of the molecule, we would laugh as to a joke, we would think that we are being confronted to a new, amusing, advertisement trick. But, as it comes from Africa, why should we not laugh, but take it seriously? We think we could do so, only by a form of controlled - and perhaps interested - hypocrisy.

When we find:

"The role of IPRs as instruments to promote and support commercialization - and thereby economic development - may be significantly different in the case of codified as compared to non-codified TMK systems. ... Such exploitation, whether in regard to codified or noncodified TMK involves several steps - from procurement and authentication of raw materials to packaging and distribution. With increased demands for safety, efficacy and quality control, greater investments are required in research and development, plant capacity and compliance with good manufacturing practices. Such investments may in some cases be significant, in particular, for the scientific validation of medicines through pre-clinical and clinical studies, as well as for the development of appropriate dosage forms. The size of these investments may pose an insurmountable barrier to poor local/indigenous communities willing to commercialize their knowledge."
Correa (2002), passim

we cannot refrain from thinking that this long, perfectly correct list of the difficulties of respecting strict methodological requirements for a drug to be offered safely on the market, could also provide an alibi for more relaxed, less transparent requirements of rigour and control in the manufacture and conditioning of a drug from a UDCountries.

And it is also useful to reflect on the way "Western" people (or Western" influenced ruling classes in UDCountries) are starting to carefully react to what would have been labeled 'silly prejudice' a short while ago; see here for South Africa:

"South African traditional healers or "sangomas" on Thursday welcomed a watershed court ruling that legally recognises their patient sick notes. The Supreme Court of Appeal recently upheld a verdict that a Pretoria firm wrongfully sacked a chef who took five weeks leave to deal with her tormenting ancestors."
AFP (2013) - see also:

"Triumph for traditional healers: *The Supreme Court of Appeal has ruled that a sick note from a traditional healer be seen in the same light as one issued by a qualified medical doctor.*"
Health24 (2013)

and, with a more general analysis:

"The medicine or *muti* that is used is based on plants and, sometimes, different animals. This *muti* may have pharmacological properties, but one cannot isolate the power of the remedy from the strength of the healer or that of the ancestors. The more powerful the ancestors, the more masterful the healer and the more effective the *muti* will be. This phenomenon is an example of the combination of placebo and distant healing. Pharmacological companies frequently are disappointed when research of these plants of power proves them no better than placebo whereas they may be very effective if given by the *sangoma*. From the *sangoma's* standpoint the vital ingredient missing here would be the power of the ancestral spirits assigned to the plant to do distant healing or the relationship with the spirit or the energy of the plant itself.

Sangomas are also able to manipulate the power of belief and faith, or placebo. Placebo is a vital tool for the *sangoma*. In Western medicine, randomized, controlled, double-blinded studies are conducted to test the true pharmacological action of a drug, unimpeded by the placebo effect, or the patient's belief that the drug will work. We know that the patient's "Inner Healer" is able to cure many maladies if there is a strong belief in the treatment being administered. In various trials, the placebo or dummy medicine often leads to at least 30% of the patients showing a response. Although Western doctors are focused on eliminating the placebo effect, *sangomas* are masters at enhancing it , using their powerful rituals and their own charisma. Placebo is augmented with ceremonies and plant medicines which act as "containers" for the healing. The *muti* is always prescribed with a heavy application of attention, intention, action and affirmation, which have now become part of a modern, integrative, or holistic [remember what we wrote about the powerful, if silly, martra 'holistic' in Chapter 0 of the present Guide!, approach.

Whereas placebo works directly on the Inner Healer through the power of belief to effect healing, distant healing works via the Field to cause healing without the benefit of faith. Distant diagnosis and distant healing have been used by *sangomas* for thousands of years. Indigenous healers can enter the cosmic field and invoke the help of the spirits for healing. When the ancestors are invited to help with the healing, the remedy goes beyond placebo and would be called distant or remote healing."
Cumes (2013)

There are however useful and well-directed tentatives to employ some clearer, non ideological thinking and methodologies on TMK in UDCountries; see for instance:

"Le Département de médecine traditionnelle de l'Institut national de rechderche en santé publique du Ministère de la santé, Bamako, Mali ... organise un atelier de formation sur les essais cliniques des plates médicinales ... du 23 au 28 février 2014. ... L'atelier est pour les chercheurs africains qui sont déjà impliqués, ou souhaitent devenir impliqués, dans la recherche clinique et le développement de médicaments traditionnels améliorés. ... Après l'atelier, nous continuerons à soutenir les participants à developper leurs protocoles, à rechercher des financements, et à faire leur étude clinique. Il y a 25 places pour des chercheurs Africains. Ces places son méritoires et compétitives."
Oxford (2014)

[This 'atelier' (workshop) is financed by the European Union, throughout the Nuffield Departement of Primary care health sciences, University of Oxford]

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add 3.a Argemone mexixana (2014)
Argémone mexicaine (2014)
Botsaris (2007)
Bruneton (2014)
Ferreira (2011)
Furst et al (2011)
Graz et al (2005)
Graz et al (2005a)
Graz et al (2009)
Graz et al (2010)
Graz et al (2015)
Kasal et al (2014)
Lee (2002a)
Willcox et al (2007)
Willcox et al (2012)
Willcox et al (2015)

Section 3.b - TMK in the self-defined-developed countries (SDDCountries)

What happens now when we go and visit the 'TMK/self-defined-developed countries' subspace of the Maze? Items there are often as obscure, as tainted of mystical overtones as those encountered in last paragraph - 3.a - but the main point here is that already the definition and the presence of TMK is shaky there. Is there something confusingly called 'TMK' in our Western world?

You could say: yes!, as there are practitioners, often obscure people in small mountain villages, claiming to possess 'le secret' (see the card-'le secret' in paragraph 1.b); but Switzerland for instance - by her authoritative delegates at WIPO - seems to find it easier to believe that she has no TMK of sort! even more: she is not aware of any TK of sort! read these two following cards:

3.b [TMK and Switzerland; card-Switzerland (2001)]

"Responses to WIPO GRTKF questions (2001):

SWITZERLAND

Response to Question 1: We are unable to provide information on actual examples in which existing intellectual property standards have been or are being used in Switzerland to protect traditional knowledge.

It should be borne in mind, however, that all forms of intellectual property rights available under Swiss law are also available for the protection of traditional knowledge.
Therefore, any holder of traditional knowledge wishing to avail himself of intellectual property protection in Switzerland is able to do so, as long as the applicable criteria of protection are met.

Response to Question 2: In Switzerland, there is no specific (*sui generis*) law providing for intellectual property protection of traditional knowledge.

Response to Questions 3 to 25: See reply to question 2 above.

Response to Question 26: In Switzerland, there are no special measures to assist the traditional knowledge holders to acquire, exercise, manage and enforce rights in traditional knowledge.

Response to Question 27: As we have no practical or empirical information available that is based on actual examples, we are unable to provide general information or comments on perceived limitations in the application of intellectual property laws and procedures to the protection of traditional knowledge."

August 8, 2001

www.wipo.int/export/sites/www/tk/en/igc/pdf/replies.pdf

3.b [TMK and Switzerland; card-forest lore (2014)]

"Portrait: Le barbu et les arbres

Agé de 63 ans aujourd'hui, Sam Hess a toujours aimé la forêt et sa passion l'a guidé dans le choix d'un métier. Pendant 43 ans, cet habitant de la Suisse centrale a travaillé dans un service forestier. Une particularité le distingue toutefois de ses collègues: il est capable de percevoir le monde invisible dissimulé sous la surface matérielle des choses. Il entre ainsi en contact avec les êtres naturels et leurs vertus curatives. Depuis dix ans, ce géant barbu organise aussi des séminaires au cours desquels il partage ses expériences, ses connaissances et ses ' visions ' avec des personnes intéressées. Il leur révèle la face cachée de la forêt et leur fait découvrir la force thérapeutique qu'elle recèle.

Un des exercices proposés est spécialement efficace. Chaque participant choisit un arbre vers lequel il se sent attiré. Il le salue, admire sa silhouette et lui demande s'il peut communiquer avec lui. Il se place ensuite debout devant l'arbre, s'appuie contre lui ou étreint son tronc. Il se concentre sur l'être qu'il a en face de lui, en s'efforçant de faire abstraction de toute autre pensée ou impression sensible. Il s'agit de 'rester attentif et ouvert aux impulsions fournies par l'arbre, sans attendre quoi que ce soit '. De nombreuses personnes vivent des expériences intenses durant cette séance. Par exemple parce qu'un hêtre leur dit: 'Auprès de moi, tu es à l'abri, tu peux être ce que tu es vraiment. ' Ou un épicéa: 'J'aime le mouvement, laisse onduler ton corps et nous oscillerons ensemble. ' Ou encore un chêne: 'Ralentis ta respiration et perçois le rythme de mon souffle. Rejoins-moi et nous ne ferons plus qu'un.'

A elle seule, une telle rencontre peut déjà avoir un effet thérapeutique. Elle aide l'homme moderne à renouer avec la nature. 'Le rayonnement d'un arbre imposant peut donner de la force dès qu'on le touche ou qu'on se tient dans son ombre ', explique Sam Hess: 'J'encourage les gens à établir une relation avec leur arbre préféré. '

Diverses essences disposent en outre de substances curatives, comme aussi de nombreuses herbes. Les bourgeons de sapin favorisent la formation des os, alors que ceux des aulnes renforcent la mémoire. Certains spécimens à fleurs réduisent les angoisses (tremble, par exemple) ou aident les gens qui se sentent dépassés (orme). C'est toutefois d'un résineux que Sam Hess fait l'éloge le plus enthousiaste: 'On se sent particulièrement bien dans une pièce en arolle et c'est dans un lit de ce même bois qu'on dort le mieux.'

Ledergerber (2014)

3.b [TMK and Switzerland; card-bougie de purification (2014)]

"Bougie de purification de l'habitat

Nos bougies LUMIERE D'ENERGIE ont pour but d'effectuer un nettoyage énergétique profond dans le lieu dans lequel on se trouve de manière a ce que l'équilibre nécessaire a notre bien-être soit retrouvé. Elles débarrassent les énergies négatives des lieux (appartement, maison, ferme ancienne ou rénovée, commerces, salons de coiffure ou d'esthétique, cabinet médical ou de thérapie naturelle, salles d'attente ou de conférence, etc.) et dépolluent l'atmosphère, ce que nous appelons souvent une atmosphère lourde ou irrespirable, et déprogramment les mémoires des murs (mémoires laissées par les résidents ou anciens locataires, les pensées négatives, maladies, souffrances, violences, colères, mal-être, dépression, disputes, ainsi que les activités ayant eu lieu, etc.)

Elles ont aussi pour fonction d'élever le taux vibratoire des lieux et le taux énergétique des personnes, elles apportent calme et sérénité.

LOTION CELESTE DECROCHE LES AMES ERRANTES ENTITES NEGATIVES ET LES AMES MAL DESINCARNEES PERTE D'UN ETRE CHER SUR LE CORPS PHYSIQUE ET LES CORPS SUBTILS

La présence d'entités négatives d'âmes errantes perte d'un être cher (par suicide accident ou mort naturelle IVG) s' accroche aux champs énergétiques des personnes pour se nourrir de nos propres énergies avec des conséquences lourdes pour les personnes qui les subissent et nous épuise vide de nos énergies: fatigue permanente sueurs froides ainsi que les vibrations négatives et maladies des personnes décédées. CE GEL D'ONCTION CELESTE EST TELLEMENT PUISSANT QU'IL ENLEVE DE MANIERE SIGNIFICATIVE LE TAUX VIBRATOIRE ENERGETIQUE GLOBAL DE LA PERSONNE INSTANTANEMENT. Il est conseillé d'utiliser l'eau Spirite Céleste et la bougie Spirituel Céleste pour la perte d'un être cher. Ce gel n'est pas un médicament."

Boutique Bien Etre diffusion, Lausanne

www.bienetrediffusion.ch/product_info.php?products_id=195
(lu le 25-4-'14)

Of course, there is a domain of TMK diffused in our society and in the Maze, but it is hard to find - and when we meet it, we generally prefer to say: 'trash!'; for, what would you say of this, for instance?

"Plutôt qu'une technique, la médiumnité est un état 'd'être', une philosophie de l'âme, l'intériorisation et la conscience de ce qui 'est'. Liée à l'empathie envers autrui (c'est-à-dire ce sentiment d'union avec l'autre), et à l'approche spirituelle, elle permet le ressenti instantané. En dehors de l'espace temps et de la distance, clairvoyance, clairaudiance, vécu intérieur de l'âme et du cœur sont présents. Le support, quel qu'il soit, permet à la personne medium de rajouter des informations, de compléter quelque situation que ce soit. En aucun cas, il ne se substitue au ressenti direct. Cela suppose d' 'agir' avec humilité, avec sincérité et loyauté et sans désir de lucre, de pouvoir ou mercantilisme. La démarche est la même en ce qui concerne la canalisation (channelling - mot vulgarisé en anglais: médiation entre l'humain et la conscience universelle). La même aussi pour le magnétisme ou imposition des mains avec foi et désir profond de soulager autrui. Élevant en cela le taux vibratoire, elle fait accéder à une qualité d'énergie plus vaste et plus efficace. Les maux physiques sont l'expression de nos émotions vécues et non prises en considération. Ayant conscience d'un quelconque dysfonctionnement, nous pouvons influencer sur notre devenir par notre manière de penser."
read on Internet, 16 August 2013

www.lisamedium.ch/index.html

If not 'trash!', then perhaps 'quackery'?

3.b [TMK and Western quackery; card-Worrall et al (2009)]

"Since ancient times, many people have held the mistaken belief that poor eyesight can be cured by special eye exercises. This belief was brought to its highest state of fruition by a one-time reputable physician, William Horatio Bates, M.D., who in 1920 published The Cure of Imperfect Eyesight by Treatment Without Glasses. In 1917, Bates teamed up with Bernard Macfadden, a well known food faddist who published the magazine Physical Culture. Together they offered a course in the Bates System of Eye Exercises for a fee that included a subscription to the magazine. This venture met with considerable success and led many people to believe in the Bates System. However, the big impact of Bates's work materialized after publication of his book. ... Contrary to scientific fact, Bates taught that errors of refraction are due, not to the basic shape of the eyeball or the structure of the lens, but to a functional and therefore curable derangement in the action of the muscles on the outside of the eyeball. All defects in vision, he said, were caused by eyestrain and nervous tension; and perfect vision could be achieved by relaxing the eyes completely. Bates warned that eyeglasses cause the vision to deteriorate; he also deplored the use of sunglasses. Bates claimed his exercises could correct nearsightedness, farsightedness, astigmatism, and presbyopia (the inability of older people to focus their eyes on nearby objects). ... His exercises included palming (covering the eyes and attempting to see blackness) and shifting or swinging the gaze from object to object.

It should be obvious that these exercises cannot influence eyesight disorders as Bates claimed. Nearsightedness, farsightedness, astigmatism, and presbyopia result from inborn and acquired characteristics of the lens and the eyeball—which no exercise can change. As for eye diseases, the only thing the exercises can do is delay proper medical or surgical treatment and result in permanent impairment of vision. The claims Bates made in advertising his book were so dubious that in 1929 the Federal Trade Commission issued a complaint against him for advertising 'falsely or misleadingly'. ...

Like Bates, 'Vision therapists' claim to strengthen eyesight through a series of exercises. In contrast to Bates' use of relaxation, vision therapists promote active exercises. They emphasize exercising focusing, eye pointing and eye movement skills. Exercises may include eye-hand coordination drills, watching a series of blinking lights, staring at colored lights (Syntonics), bouncing on a trampoline and even sleeping in a certain position. Often they prescribe bifocal and prism glasses to prevent or cure nearsightedness. In addition to promising to eliminate glasses, they claim that these methods can also improve school and athletic performance, increase I.Q., help overcome learning problems and attention disorders and even prevent juvenile delinquency. However, no scientific evidence supports such claims. ...

Parents often abandon common sense in their quest to help their struggling children and are easy prey for therapists promising a cure. ... . The practitioner, boasting that vision training is a low-cost, high-profit specialty, claimed that he generated close to $950,000 in new billings during the first twelve months of the supermarket campaign."

Worrall et al (2009), passim

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or perhaps plainly 'trash'?

The self-defence of our 'Western' myth, that tends to represent our Western society as 'rational', 'conscious of our values' etc., condemns all sort of traditional belief (here 'traditional' is in the sense of 'learned by way of mouth', outside the honest and illuminating and official school system) to an obscure corner of social behaviour. Apart from 'science', only the official religions are strangely accepted into this self-defined Pantheon of luminous world view.

And therefore only sociologists, ethnologists, anthropologists, linguists and so on are at present interested in this 'obscure corner' of our life; but they generally prefer to explore learnedly the 'obscure corners' of the UDCountries instead of ours.

There is a form of cowardice, however, in several contemporary attempts to analyse and judge the 'Western' inheritage of silly, 'ancestral', TMK and present it as 'wise' or 'experimentally sound' (most of this cowardice, however, is clearly in bad faith; it is just a marketing attitude, to cater for the fascination of the 'old lore' and to sell books and sometimes 'mediaeval remedies'. Read the following card, please:

3.b [TMK and Western quackery: card-Alexandre (1714)]

"Le Titre de ce Recuëil fait connoître le dessin qu'on a eû en le faisant imprimer, qui à été de fournir aux Pauvres, sur-tout à ceux de la campagne qui languissent ou meurent étant privés des sécours que ceux des villes reçoivent des personnes charitables, des moyens sûrs et aisés de se soulager dans leurs infirmités; ces remèdes étant tirés, ou des alimens & et des animaux domestiques, ou des Plantes, qu'ils trouverons facilement dans les jardines & dans les champs. ... On s'attend bien qu'étant composés d'ingrédiens communs, & même dégoûtants, il seront méprisés & rejettés par les riches et par les personnes qui affectant en tout des airs de grandeurs, jusque dans l'usage de remèdes, n'estiment que ceux dans lesquels n'entrent que des Drogues rares. ... Les gens du commun se guérissent promptement & parfaitement des mêmes maladies par des remèdes simples & familiers, que leurs Médecins n'osent souvent leur proposer , ou par crainte de blesser leur vanité & leur délicatesse, ou de passer eux-mêmes pour des Médecins à remèdes de bonnes femmes; car c'est ainsi qu'on les appelle pour les rendre méprisables." (p.iv)

Vertige:

"On doit prendre les remèdes depuis la nouvelle Lune jusqu'à la pleine Lune, dit Etmuller; ce qui est à observer non-seulement à l'égard du Vertige , mais encore dans l'Epilepsie, l'Apopléxie & les autres maladies de la tête, où le mouvement de la Lune est d'une grande considération; & un Médecin qui n'y fait pas d'attention, fait plus de mal que du bien. ... Une dragme de fiente de Paon ou d'Oye; recueillis depuis Mai jusqu'en Septembre et séché à l'ombre, infusée pendant la nuit dans du vin blanc, passées le matin par un linge, & la colature bûë à jeun depuis la nouvelle jusqu'à la pleine Lune, est un remède éprouvé au Vertige & à l'Epilepsie. Pour celle d'Oye, elle est excellente pour la jaunisse. (pp.13-14)

Epilepsie:

"La racine de Peone mâle pendue au col, est un excellent Amulette, pour se préserver de l'Epilepsie; il la faut cueillir dans le mois de Mars ou d'Avril, au décours de la Lune. La vertu amulettique de cette racine a été éprouvée par Galien , confirmée par Forestus, par Bartholin , & dans le Observations communiquées à Riviére par Monsieur de Grandpré. ... Un homme fort tourmenté de l'Epilepsie, ayant fait inutilement plusieurs remèdes, a été guéri après avoir mangé le foye d'un Loup, & en a guéri plusieurs autres par ce même remède. (p.14)

"Videz une noisette ou aveline piquée dû ver, Se par ce trou avec une épingle vous rompez & ôtez tant que vous pourrez l'amande de dedans, étant vidée emplilêz-la de vif-argent, puis bouchez le trou avec de la cire d'Espagne; ... enveloppez cette noisette pleine de vif-argent dans un petit morceau d'écarlate, & l'ayant bien cousu, pendez le au col du malade, en sorte qu'il vienne toucher à nud au creux de j'estomac. Cela n'est pas capable de faire passer l'accès, mais depuis qu'il sera appliqué, le mal ne reviendra plus, ainsi qu'on l'a expérimenté sur un garçon qui tombait tous les quinze jours, & qui, en le portant, n'est pas tombé une fois en huit moîs." (pp.14-15)

Alexandre (1714)

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and see how this clearly explicit 'trash' is judged by Mireille Laget (a history teacher) and Claudine Luu (a pharmacist) in a 1984 French book dedicated to Dom Alexander's book (Laget et al (1984):

"...il apparaît comme l'un des plus abordables et des plus intéressants pour le lecteur du XXe siècle: les traitements y sont relativement simples, les témoignages de personnes malades nombreux et vivnts, les substances bien identifiables et citées en nombre considérable" (p.26)

[for 'les 'traitements relativement simples', you could quote 'la fiente de Paon', 'le foye d'un Loup', ...; for 'les substances bien identifiables', you could quote 'le castoreum [sécrétion odorante de la région anale du castor]', 'le tartrate d'antimonium', ...; for 'les témoignages de personnes malades' you could quote 'un homme fort tourmenté de l'Epilepsie', 'Dolée assùre que l'expérience lui a appris', ...]

- about the moon's phases: "Les phases de la lune sont observées pour la régulation de la cueillette, la pleine lune et la lune obscure étant les deux périodes les plus actives. L'expérimentation systématique démontre l'influence lunaire sur la montée de la sève: la piloselle, par exemple, ou oreille de souris, est beaucoup plus diurétique quand on la récolte en pleine lune" (p.16)

[we are told about the 'piloselle', but not a single word is spent on Alexander's opinions on the importance of the moon's phases on Vertige, Epilepsie, Apopléxie and so on]

luckily, a few things are still able to astonish the two authors: 'la fiente de Paon' provoques: "quant à la médecine excrémentielle proposée ici, il faut bien dire qu'il est assez difficile de trouver une explication raisonnable" (p.49); 'la noisette ... empilée de vif-argent' provoques: "il est difficile de justifier l'action du pendentif de vif argent (mercure) fabriqué avec une noisette creuse"

however, the therapeutical usage of an amulet is justified: "à remarquer aussi, l'usage d'un amulette qui peut être interprétée comme purement magique, mais qui, en fait, pourrait correspondre à une imprégnation très douce du sujet: la peone mâle (pivoine noire) est utilisée aujourd'hui, en dose infinitésimale en homéopathie, pour les sensations de pésanteur de la tête avec vertige" (p.52)

But we shall go back on this later, on Chapter 5, to see where this rather schizophrenic denial of the presence of TK in our societies leads to.

3.b [holism and homeopathy; card-Tribune (2012)]

"Tribune médicale: Conseils (guide pratique pour une vie saine et active):

Une médicine toute douce pour les tout-petits. ... Plus le nourrisson est petit, plus il est sensible. C'est la raison pour laquelle il faut être particulièrement prudent en matière de prévention et de traitement des maladies.

Pour éviter les traitements trop puissants, de nombreux parents choisissent d'abord de traiter leur enfants par des remèdes maison ou l'homéopathie.

L'homéopathie s'appuie sur un concept global, également appelé holistique. Elle ne se concentre pas sur le traitement de symptômes spécifiques mais prend en compte une vision globale des symptômes physiques, émotionnels et psychiques pour le diagnostique. C'est la raison pour laquelle les traitements homéopathiques peuvent être pris aussi bien contre les troubles physiques et pout apaiser un enfant agité ou qui a tendance à pleurnicher, voir en cas d'insomnie. ...

Les composés utilisés respectent le principe de similitude, et les substances choisies pour le traitement sont adaptées au patient selon le principe d'individualisation et administrées à dose infinitésimales.

L'homéopathie pour les enfants; des traitements doux et efficaces grâce à l'homéopathie:

A portée de tous! Pratique, la pharmacie pour enfants OMIDA vous offre un éventail de traitements contre la plupart des troubles aigus. S'accompagne idéalement du livre 'L'homéopathie réservée aux enfants'.

Vous trouverez les produits OMIDA dans les drogueries et pharmacies."

Tribune (2012), pp.1, 10, 11

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add 3.b

Chapter 4

SO, WE AGREE ON TWO THINGS: WHO (2000) - "General guidelines for methodologies on research and evaluation of traditional medicine" - IS THE BEST POLICY, AND WE SHOULD GO WITH THE SECOND-BEST POLICY


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SO, WE AGREE ON TWO THINGS: HONESTY IS THE BEST POLICY, AND WE SHOULD GO WITH THE SECOND-BEST POLICY.

Dave Coverly

Chapter 4 - Loss of control on the TMK methodological paradigms

Introduction to Chapter 4

During our rapid trip through that large, if ill-defined, part of the Maze where, in a confusing disorder, plants, herbs, minerals and rhino horns compete in their offering the largest choice of drugs supposed to be able to heal most of human suffering, and of doing so efficiently (if not safely!), we have only seldom met with methodological invitations to prudence and doubt.

There are superstitions embedding quite a lot of the so-called, or better presumed, 'ancestral' TMK, that have dangerous consequences not only for the poor people who are induced to obey to them, but also on the environment in which these people live. See for instance next card, on the consequences of the TMK fantastic properties attributed to the rhino's horns on the precarious survival of rhinoceros:

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4. [African TMK - superstitions; card-rhinoceros horns (2013)]

"One repeated misconception is that rhinoceros horn in powdered form is used as an aphrodisiac in Traditional Chinese Medicine (TCM) as *Cornu Rhinoceri Asiatici*. In fact, it is prescribed for fevers and convulsions. Neither have been proven by evidence-based medicine. Discussions with TCM practitioners to reduce its use have met with mixed results because some TCM doctors consider rhino horn a life-saving medicine of better quality than substitutes. ... To prevent poaching, in certain areas, rhinos have been tranquilized and their horns removed. Armed park rangers, particularly in South Africa, are also working on the front lines to combat poaching, sometimes killing poachers who are caught in the act. ... During 2011, 448 rhino were killed for their horn in South Africa alone. The horn is incredibly valuable: an average sized horn can bring in as much as a quarter of a million dollars in Vietnam and many rhino range states have stockpiles of rhino horn."

Wikipedia (last read: August 17, 2013)

- "Rhino heads and horns worth £428,000 stolen from Irish museum

A gang of thieves have stolen rhino heads and horns worth up to half a million euros (£428,000) from an Irish museum. The four rhino heads were removed from public display and placed in storage more than a year ago. ...

A statement issued on behalf of the museum said: 'The stolen rhinoceros heads have a total of eight horns that have probably been taken to supply the illegal trade in powdered horn that is used in traditional medicines in the Far East. Their price is based on weight and the total amount stolen could have a street value in the region of 500,000 euros'. The statement added that several species of rhino have been 'brought to the edge of extinction' due to poaching in the wild, so in recent years thieves have begun to target museum and private collections."

BBC News, April 18, 2013

- "Rhinoceros horn use

All five of the world's diverse species of rhinoceros have been brought to the edge of extinction because of human appetite for their distinctive horns. The horns have been prized for tens of centuries for their beautiful translucent color when carved, and their supposed healing properties. In the Middle Eastern country of Yemen, the horn continues to be coveted by Muslim men, although imports were banned in 1982. ... Jambiya are considered a sign of manhood and devotion to the Muslim religion, and are used for personal defense. Yemeni men place great value on the dagger handles, which are commonly studded with jewels. ...

Far more pervasive, however, is their use in the traditional medicine systems of many Asian countries, from Malaysia and South Korea to India and China, to cure a variety of ailments. In Traditional Chinese Medicine, the horn, which is shaved or ground into a powder and dissolved in boiling water, is used to treat fever, rheumatism, gout, and other disorders.

www.pbs.org/wnet/nature/episodes/rhinoceros/ (April 19, 2013)

Compare, for instance, in next card, the enthusiasm in Chevallier's note with the cautious meta-analysis by Harmon; and the totally irresponsible suggestion, by Triponez, on the use of the 'common groundsel' (Senecio vulgaris) as an 'excellent' emmenagogue, with the note on the dangerous hepato-toxicity of it, by the French veterinarian association:

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4. [TMK and medicinal plants; card-medicinal plants]

Sur l'emploi du millepertuis (Hypericum perforatum), de la chélidoine (Chelidonium majus), du séné (Senna alexandrina) et du séneçon (Senecio vulgaris):

"Toxicité directe: En dehors de tous les risques d'erreur possibles sur la nature de la plante ou de ses extraits et sur la contamination éventuelle des matières premières, les dangers potentiels de toxicité directe de la phytothérapie que l'on peut citer à titre d'exemple sont: l'emploi sans contrôle du millepertuis (incompatible avec d'autres traitements ou pouvant entraîner une photosensibilisation: voir plus haut), l'emploi de la chélidoine (Chelidonium majus), du séné (Senna alexandrina) ou du séneçon (Senecio vulgaris) aux propriétés hépatotoxiques, ou l'emploi de plantes contenant des facteurs toxiques, ou oestrogéniques, ou anti-nutritionnels qui n'auraient pas reçu de traitement approprié pour éliminer ces facteurs. L'hépatotoxicité est un des effets délétères les plus souvent rapportés en phytothérapie humaine."
AVF (2010), passim

to be compared with:

"Le séneçon est un emménagogue de choix. ... Sans nocivité et sans aucun effet secondaire, cette excellente plante peut être recommandée à toutes celles qui souffrent de troubles de la menstruation." (p.232)
Triponez (1957)

Sur l'emploi de Gingkom (Gingko biloba):

"Gingko Doesn't Slow Cognitive Decline in Elderly... The researchers found that those who had been given gingko pills performed the same in memory, language, attention, visuo-spatial judgment and executive function tests as those in the placebo group. ... An analysis published last year in *JAMA* using the same data pool, the Ginkgo Evaluation of Memory (GEM) study, found that the herbal supplement was ineffective in preventing Alzheimer's disease. Still, DeKosky and his colleagues thought they might uncover more specific cognitive functions, such as language or executive function, that were being aided by ginkgo. In many treatment studies, he explains, differences often emerge on a small scale, 'but we didn't see any differences'."
Harmon (2009)

to be compared with:

"Gingko is probably one of the most useful herbs for the treatment of senile dementia. (p.98)

Gingko is the oldest tree on the planet. Its leaves maintain good circulation to the heart and brain, improving memory, concentration, and energy levels. Evidence suggests it may reduce the risk of stroke." (p.319)
Chevallier (1996)

The almost zero level of methodological awareness in books, booklets, leaflets on TMK as available in Switzerland, for instance, can be easily judged by the repeated refrain claiming total irresponsibility with the respect to the published, offered material:

"Les forces du Tamarinier et de 120 autres arbres guérisseurs. Ce livret est un 'cadeau' d'un connaisseur de plantes médicinales du Mali et de tout le Sahel ... Nous ne connaissons pas son auteur et nous ne pouvons donc pas garantir la valeur médicinale des recettes ..."

MAMOU (2008): Les forces du Tamarinier et de 120 arbres guérisseurs du Mali et de tout le Sahel; Guide thérapeutique classé par maladies.

"Warning: The medicinal and other uses of herbs described in this volume have been included for informational and study purpose only. The authors and publishers neither advocate not prescribe the use of any herb for medicinal or other purpose. Please note that some herbs mentioned in this book could be poisonous. The authors and publisher assume no liability for omissions or for use or misuse of information contained herein."

Craker et al (1992): Herbs, spices and medicinal plants; Recent advances in botany, horticulture and pharmacology,

(This is the sort of disclaimer, common to several of the books on medical plants you can find in the list 'card-books on medical plants' we gave in Section - 3.a; but this is possible only in those not very frequent books where some slight doubt about the utilisation and utility of the products was born in the mind of the authors; in general, doubts and precautions are far from their minds).

It is really hard to understand why these very numerous books, floating in the Maze, are published; in reality, notwithstanding their disclaimers, they do give lists of herbs and spices, and they do associate them with diseases; and they do create therefore the basis for a - possibly dangerous or useless - use.

How can the authors of MAMOU write that their book is 'un cadeau d'un connaisseur de plantes médicinales du Mali et de tout le Sahel', to add calmly that 'nous ne connaissons pas son auteur et nous ne pouvons donc pas garantir la valeur médicinale des recettes'?

How can Craker et al affirm that they 'neither advocate nor prescribe the use of any herb', and therefore 'assume no liability for omissions or for use or misuse of information', when the title of their book promises 'recent advances in ... pharmacology'? are the authors unsure of their sources and data? if so, why to publish, and so largely diffuse them?

As far as we can see, there is no regulatory authority in the Maze, capable and apt to impose some sort of methodological standard of rigour and honesty to the objects floating there; we saw in Section 2.a however that WHO tried. How things are therefore evolving in the TMK subspace after WHO (2000)?

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add Intr.4 Velásquez et al (2015)

Section 4.a - Role, responsibility and contradictions of WHO

We have seen (Section 2.a) how WHO has rather consistently tried to impose (to propose?) some sort of methodological protocol to apply to any proposition on use of herbal remedies. As a matter of fact, since at least 1985 and at least till 2011, we can find a steady stream of WHO's methodological interventions - or, perhaps, due to the resistances of the medium, of WHO's rather unsuccessful essays of intervention.

- **methodological initiatives on TMK taken by WHO before WHO (2000):**

Some initiatives were taken even before WHA40.33 (1987), that urged Member States to ensure quality control of drugs derived from traditional plant remedies by using modern techniques; for instance, Inter-regional workshop, Bangkok, on the selection and use of traditional remedies in primary health care, WHO (1986); further initiatives were stimulated, in particular, by resolution WHA40.33 (1987), for instance, the WHO/DANINA Course:

"The last decade has seen a considerable growth of popular, official, and commercial interest in the use of traditional remedies. For the majority of the world's population these have been and, in many instances, are still the only form of treatment readily available. ... There has been a widespread misunderstanding of the Organisation's [WHO] clarion call in support of its Traditional Medicine Programme. WHO encourages and supports countries to identify and provide safe and effective remedies and practices for use in the formal and informal health system. This does not, however, amount to a blind endorsement of all forms of traditional medicine. ... There is a common belief that remedies of natural origin are harmless and carry no risk to the consumer. Nothing could be further from the truth. ... Even more important may be the use of highly toxic plants, erroneously identified as medicinal herbs. ... Perhaps the most important function of the WHO in this connection is to ensure that traditional medicine is neither accepted outright nor blankly ejected, but rather examined critically and with an open mind."

WHO (1991), passim

We have however already noted that the *magna opus* by WHO on methodology is the represented by the 'WHO methodological guidelines' [WHO (2000)] that should, hopefully, be present and well alive and easily found in the Maze. We have briefly summarized them in the following 3 cards:

4.a [methodological standards for TMK: WHO guidelines; card-WHO (2000)]

"Research and evaluation: With the tremendous expansion in the use of traditional medicine worldwide, safety and efficacy as well as quality control of herbal medicines and traditional procedure-based therapies have become important concerns for both health authorities and the public. Various practices of traditional medicine have been developed in different cultures in different regions without a parallel development of international standards and appropriate methods for evaluating traditional medicine. (p.v) ...

- Traditional medicine has a long history. It is the sum total of the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health, as well as in the prevention, diagnosis, improvement or treatment of physical and mental illnesses. (p.1) ...

- Herbal medicines: The theories and concepts of prevention, diagnosis, improvement and treatment of illness in traditional medicine historically rely on a holistic approach towards the sick individual, and disturbances are treated on the physical, emotional, mental, spiritual and environmental levels simultaneously. (p.5) ...

- Risks: The therapeutic alternatives available within the community and the risks of the herbal medicine have to be taken into account. (p.7) ...

- Traditional procedure-based therapies: Traditional procedure-based therapies are therapies that use various techniques, primarily without the use of medication, to provide health care. ... Accordingly, the evaluation of adverse effects should be considered a priority area for systematic evaluation of safety of these therapies. (p.9) ...

- Clinical research: The starting point in the design of a research protocol is a complete literature review, including the traditional use of the proposed practice and existing scientific research in the field. Where little or no literature exists, the oral tradition and the source of this tradition need to be clearly stated. (p.10) ...

- Study design: Ethnographic studies that document the social and cultural context in which a traditional practice emanates may be appropriate in situations where there is no available scientific literature or other documentation. (p.12) ...

- Observational studies: The special feature of these studies is that they seek, as far as possible, not to influence the individual doctor–patient relationship with respect to indications, and the selection of and carrying out the treatment. (p.13) ...

- Other issues and considerations: In some countries and hospitals, there are ethical issues that restrict the use of clinical trials. In some cases, the use of a placebo is even illegal, particularly for patients suffering from certain illnesses, such as cancer." (p.17)

WHO (2000)
whqlibdoc.who.int/hq/2000/WHO_EDM_TRM_2000.1.pdf

4.a [methodological standards for TMK: WHO information; card-WHO inf.]

"In 1978, the 31st World Health Assembly had adopted a resolution (WHA31.33) that called on the Director-General to compile and periodically update a therapeutic classification of medicinal plants ...; resolution WHA40.33, adopted in 1987, urged Member States to ensure quality control of drugs derived from traditional plant remedies by using modern techniques ...; and resolution WHA42.43, of 1989, urged Member States to introduce measures for the regulation and control of medical plant products. (p.21) ...

I - Guidelines for the assessment of herbal medicine (product information for the consumer):

Product labels and package inserts should be understandable to the consumer or patient. The package information should include all necessary information on the proper use of the product.

The following elements of information will usually suffice:

- name of the product; quantitative list of active ingredient(s); dosage form; indication; dosage (if appropriate, specified for children and the elderly; mode of administration; duration of use; major adverse effects, if any; over-dosage information; contraindications, warnings, precautions and major drug; interactions; use during pregnancy and lactation; lot number; holder of the marketing authorization. (pp.21-26)

- Identification of the active ingredient(s) by the Latin botanical name, in addition to the common name in the language of preference of the national regulatory authority, is recommended. Sometimes not all information that is ideally required may be available, so drug regulatory authorities should determine their minimal requirements. (p.25)

II - Research guidelines for evaluating the safety and efficacy of herbal medicine (pp.27-32)

III - Report of a WHO consultation on traditional medicine and AIDS:

The performance of a clinical trial under controlled conditions requires a constant supply of a product whose botanical identification and characterization can be verified. Lack of assurance of plant species identity is arguably the most serious deficiency of commercial herbal products. If there is no reliable chemical basis for determining identity, and botanical morphology is destroyed during formulation by such processes as powdering and extraction, only independent botanical certification can provide the necessary assurance. A botanical certification scheme, organized along the lines of the WHO certification scheme for pharmaceutical products, would be an invaluable international stimulus towards botanical quality assurance. Each professional grower/supplier of medicinal plant material would be required to submit to the designated national botanical authority an appropriate sample of the plant, in a state of sufficient integrity to allow physical identification for confirmation of species identity." (p.33)

WHO (2000), passim

4.a [methodological standards for TMK: WHO initiatives; card-WHO ini.]

- methodological initiatives on TMK taken by WHO before WHO (2000):

- some initiative even before WHA40.33 (1987), that urged Member States to ensure quality control of drugs derived from traditional plant remedies by using modern techniques; for instance, Inter-regional workshop, Bangkok, on the selection and use of traditional remedies in primary health care, WHO (1986); further initiatives were stimulated, in particular, by resolution WHA40.33 (1987), for instance, the WHO/DANINA Course.

- methodological initiatives on TMK taken by WHO after WHO(2000):

- Legal status of traditional medicine and complementary/alternative medicine (A world review):

'It includes information on the regulation and registration of herbal medicines as well as of non-medication therapies and traditional and complementary/alternative medical practitioners. It is an easy reference, providing summaries of the policies enacted in different countries and indications of the variety of models of integration adopted by national policy-makers. Through country-specific sections on Background information, Statistics, Regulatory situation, Education and training, and Insurance coverage, it is designed to facilitate the sharing of information between nations as they elaborate policies regulating traditional medicine and complementary/alternative medicine and as they develop integrated national health care systems. ... Recognizing the widespread use of traditional and complementary/alternative medicine and the tremendous expansion of international markets for herbal products, it is all the more important to ensure that the health care provided by traditional and complementary/alternative medicine is safe and reliable; that standards for the safety, efficacy, and quality control of herbal products and traditional and complementary/alternative therapies are established and upheld.' "
WHO (2001), passim

- "The International Classification of Traditional Medicine will have an interactive web-based platform to allow users from all countries to document the terms and concepts used in traditional medicine. 'Several countries have created national standards for the classification of traditional medicine but there is no international platform that allows the harmonization of data for clinical, epidemiological and statistical use. ... 'There is a need for this information to allow clinicians, researchers and policy-makers to comprehensively monitor safety, efficacy, use, spending and trends in health care', said Kieny [Assistant Director-General of Innovation, Information, Evidence and Research at WHO]. The classification will initially focus on traditional medicine practices from China, Japan and the Republic of Korea that have evolved and spread worldwide."
WHO (2010b) (Note for the media)

[see also: WHO (2001a), WHO (2002), WHO (2002a), WHO (2002b), WHO (2003), WHO (2003a), WHO (2003b), WHO (2004), WHO (2008), WHO (2009), WHO (2009a), WHO (2009b), WHO (2010), WHO (2010a), WHO (2010b), WHO (2011), WHO (2013), WHO (2013a)]

We add now a forth card, on a short but very useful WHO's 'Note for the media' on the definition of 'information standards for traditional medicine':

4.a [methodological standards for TMK: WHO note; card-WHO (2010b)]

"Note for the media

WHO to define information standards for traditional medicine

7 December 2010, Tokyo, Japan

WHO will develop, for the first time, a classification of traditional medicine, paving the way for the objective evaluation of its benefits

Creating an evidence base for traditional medicine

The International Classification of Traditional Medicine project will assist in creating an evidence base for traditional medicine – producing terminologies and classifications for diagnoses and interventions.
'We recognize that the use of traditional medicine is widespread. For many people – especially in the Western Pacific, South-East Asia, Africa and Latin America – traditional medicine is the primary source of health care', said Dr Marie-Paule Kieny, Assistant Director-General of Innovation, Information, Evidence and Research at WHO. 'Throughout the rest of the world, particularly Europe and North America, use of herbal medicines, acupuncture, and other traditional medicine practices is increasing. Global classification and terminology tools, for traditional medicine, however, have been lacking'.

International platform to harmonize data

The International Classification of Traditional Medicine will have an interactive web-based platform to allow users from all countries to document the terms and concepts used in traditional medicine.

'Several countries have created national standards for the classification of traditional medicine but there is no international platform that allows the harmonization of data for clinical, epidemiological and statistical use. There is a need for this information to allow clinicians, researchers and policy-makers to comprehensively monitor safety, efficacy, use, spending and trends in health care', said Kieny.

The classification will initially focus on traditional medicine practices from China, Japan and the Republic of Korea that have evolved and spread worldwide."

WHO (2010b)

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and a fifth card, on an interesting tentative by the European Commission to discriminate between the safety requirements demanded for the marketing of the official, big-Farma drugs, and for that of traditional remedies:

4.a [methodological standards for TMK: EC; card-EC (2004)]

"Directive 2004/24/EC of the European Parliament and of the Council,
EC Directives on traditional herbal drugs:

(1) Directive 2001/83/EC requires that applications for authorisation to place a medicinal product on the market have to be accompanied by a dossier containing particulars and documents relating in particular to the results of physico-chemical, biological or microbiological tests as well as pharmacological and toxicological tests and clinical trials carried out on the product and thus proving its quality, safety and efficacy.

(2) Where the applicant can demonstrate by detailed references to published scientific literature that the constituent or the constituents of the medicinal product has or have a well-established medicinal use with recognised efficacy and an acceptable level of safety within the meaning of Directive 2001/83/EC, he/she should not be required to provide the results of pre-clinical tests or the results of clinical trials.

(3) A significant number of medicinal products, despite their long tradition, do not fulfil the requirements of a well-established medicinal use with recognised efficacy and an acceptable level of safety and are not eligible for a marketing authorisation. To maintain these products on the market, the Member States have enacted differing procedures and provisions. The differences that currently exist between the provisions laid down in the Member States may hinder trade in traditional medicinal products within the Community and lead to discrimination and distortion of competition between manufacturers of these products. They may also have an impact on the protection of public health since the necessary guarantees of quality, safety and efficacy are not always provided at present.

(4) Having regard to the particular characteristics of these medicinal products, especially their long tradition, it is desirable to provide a special, simplified registration procedure for certain traditional medicinal products. However, this simplified procedure should be used only where no marketing authorisation can be obtained pursuant to Directive 2001/83/EC, in particular because of a lack of sufficient scientific literature demonstrating a well-established medicinal use with recognised efficacy and an acceptable level of safety. It should likewise not apply to homeopathic medicinal products eligible for marketing authorisation or for registration under Directive 2001/83/EC.

(5) The long tradition of the medicinal product makes it possible to reduce the need for clinical trials, in so far as the efficacy of the medicinal product is plausible on the basis of long-standing use and experience. ... However, even a long tradition does not exclude the possibility that there may be concerns with regard to the product's safety... . The quality aspect of the medicinal product is independent of its traditional use so that no derogation should be made with regard to the necessary physico-chemical, ... tests. Products should comply with quality standards in relevant European Pharmacopoeia monographs."

EC (2004)
eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:136:0085:0090:en:PDF

Our problem is now to try and see if the WHO's guidelines have had some success, at least in the TMK subspace of the Maze. Are they quoted, discussed, followed outside the WHO's own publications? Are they accepted as a sort of groundwork, from where to start every time a new proposal of herbal TMK is formulated?

The WHO's exigencies have been from the start strong and well defined:

"Traditional medicine - Background and main challenges

In the WHO Traditional Medicine Strategy for 2002-2005 the four general objectives of policy, access, quality and rational use have also been applied to traditional, complementary and alternative medicine (TM/CAM [Complementary and Alternative Medicine]). In 2002-2007 a large number of policy documents and international and regional guidelines and quality standards for TM/CAM have been developed (Box 7). In 2007, 48 countries reported having a policy to integrate TM/CAM with the overall health system; 110 countries have regulations for herbal medicines. Based on the progress in the field of TM/CAM a growing number of countries are interested in integrating TM/CAM into national health systems, covering all aspects of TM/CAM besides herbal products. New challenges that countries are facing include issues such as how to implement this integration, health insurance coverage of TM/CAM, qualification of practitioners, and evidence-based
information to guide policy decisions and capacity building.

- Examples of standards and guidelines on traditional medicine, 2002-2007
-- Global survey of national policies on TM/CAM and regulation of herbal medicines
-- Four regional guidelines for minimum requirements of registration of herbal medicines
-- Technical guidelines related to safety, efficacy and quality:
-- Guidelines on good agricultural and collection practices for medicinal plants
-- Guidelines on good manufacturing practices for herbal medicines
-- Guidelines on safety monitoring of herbal medicines in pharmacovigilance systems
-- Guidelines on assessing quality of herbal medicines with reference to contaminants and residues
-- Guidelines on developing consumer information on proper use of TM/CAM
-- A series of basic training guidelines for providers of TM/CAM
-- WHO monographs on selected medicinal plants (Volume 1, 2, 3)"
WHO (2009b), p.22

This stand by WHO, on 'experiment and clinical control' about TMK, seems confirmed by the 'strategic objectives, strategic directions and strategic actions' outlined in WHO (2013):

"4. Strategic objectives, strategic directions and strategic actions
4.1 Strategic objective 1: To build the knowledge base for active management of T&CM through appropriate national policies
4.2 Strategic objective 2: To strengthen the quality assurance, safety, proper use and effectiveness of T&CM by regulating products, practices and pratitioners practitioners
4.3 Strategic objective 3: To promote universal health coverage by integrating T&CM services into health care service delivery and self-health care"
WHO (2013), p.43 ff

but our optimism on a possible WHO clear cut standard on 'experiment and clinical control' about TMK could be slightly shaked by sentences of this kind:

"From a public health perspective, the past use (even if ancestral) of a medicine, may not be sufficient reason to obviate pre-clinical and clinical tests needed to establish toxicity and safety. The WHO has warned that, though, in general, prolonged use of a traditional medicine offers testimony of its safety, in a few instances *'investigation of the potential toxicity of naturally occurring substances widely used as ingredients in these preparations has revealed previously unsuspected potential for systematic toxicity, carcinogenicity and teratogenicity'.* [WHO, 1996, 'Guidelines for the assessment of herbal medicines', WHO Technical Report Series, No.863, Geneva, p.180]. ... According to WHO, if adequate study of the published literature demonstrates lack of harmful effects of a herbal remedy, clinical evaluation can be undertaken without previous animal toxicology studies. "
Correa (2002), passim

Apart from Correa, we find little (next Section - 4.b will specifically explore the presence - or absence - of the WHO's guidelines in the WIPO's GRTKF program, publications, initiatives and debates). A careful, positive discussion that starts from the WHO's guidelines is that of Kamboj:

"Traditional herbal medicine and their preparations have been widely used for the thousands of years in developing and developed countries owing to its natural origin and lesser side effects or dissatisfaction with the results of synthetic drugs. However, one of the characteristics of oriental herbal medicine preparations is that all the herbal medicines, either presenting as single herbs or as collections of herbs in composite formulae, is extracted with boiling water during the decoction process. This may be the main reason why quality control of oriental herbal drugs is more difficult than that of western drug. As pointed in 'General Guidelines for Methodologies on Research and Evaluation of Traditional Medicines (World Health Organization, 2000)': 'Despite its existence and continued use over many centuries, and its popularity and extensive use during the last decade, traditional medicine has not been officially recognized in most countries. Consequently, education, training and research in this area have not been accorded due attention and support'.

In olden days vaidas used to treat patients on individual basis and prepare drug according to the requirement of the patient but now the scene has changed, herbal medicines are being manufactured on large scale where manufacturers come across many problems such as availability of good quality raw material, authentication of raw material, availability of standards, proper standardization methodology of single drugs and formulation, quality control parameters etc; hence the concept of quality from very first step is paramount factor must get good attention.

The chemistry of plants involves the presence of therapeutically important constituents usually associated with many inert substances (coloring agents, cellulose, lignin etc). The active principles are extracted from the plants and purified for therapeutic utility for their selective pharmacological activity. So quality control of herbal crude drugs and their constituents is of great importance in modern system of medicine. Lack of proper standard parameters for the standardization of herbal preparation and several instances of substandard herbs, adulterated herbs come into existence. To meet new thrust of inquisitiveness, standardization of herbals is mandatory."
Kamboj (2012), p.23

while a rather negative presentation of the WHO's presumed 'Western' and obscure motives is given by Chidi Oguamanam:

"The 'Guidelines' are based on 'scientific' criteria. This suggests that the WHO's attempt to link health to culture, pursuant to its broad notion of health, as also promoted by its joint declaration with UNESCO of 1996 as the Year of Health and Culture, is based on the reification of 'Western scientific' criteria as the basis for the validation of traditional medicine. Furthermore, the WHO's emphasis on herbal medicine, without regard to the cultural context in which that component of traditional therapy is practiced, depicts the fragmentation that the 'scientific' approach has wrougth on indigenous knowledge systems. Thus, the WHO's approach, based on narrow 'scientific' criteria, sustains the status quo that reflects the scientific/biomedical hegemony."
Chidi Oguamanam (2006), passim

This critique could be only instrumental, ready to be used to avoid the rigorous and experimental work of analysis and verification demanded by the methodological guidelines; but it could equally correspond to the frustration of peripheral groups of practitioners that feel they have been too scarcely consulted during their preparation. It is surely possible to react if and when guidelines - even if wise and well formulated - are imposed without the necessary ground consultations.

Apart from these very scarce examples of the resonance of the WHO's methodological guidelines into the TMK subspace of the Maze, no trace can be found of papers in which the acceptation and application of the guidelines is explicitly acknowledged as a useful 'guide'. You could perhaps have hoped, in an over-optimistic mood, that the guidelines be appreciated even outside the TMK subspace, into the whole of the Maze; but this is surely not so.

You could at least be curious about the way and the intensity with which WHO's herself defends them. Going throughout the Maze, we have not found a clear sign of a fighting attitude by WHO to defend, improve, generalize its methodological guidelines and, what could be even more important, gain a

more widespread consensus on them. The best lost occasion seems to us the be the publication of the acclaimed 'Benchmarks'.

WHO has prepared a number of 'Benchmarks for training in ...'; up to now, we have Ayurveda, WHO (2010); Traditional Chinese medicine, WHO (2010a); Naturopathy, WHO (2010c); Nuad Thai, WHO (2010d); Osteopathy, WHO (2010e); Unani medicine, WHO (2010f) and Tuina, WHO (2010g). We have been curious to see how and with what intensity the guidelines, or perhaps even only their guiding principles, are present in these 'Benchmarks'. We have been disappointed.

In the Ayurveda Benchmarks we find:

"The *Charaka Samhita* and *Sushruta Samhita* are the basic scriptures of Ayurveda, but they are supplemented by thousands of additions based on observation and experience, none of which affect the sanctity of the basic texts. ...

This section of the document outlines issues of safety, incompatibilities and contraindications considered important by the community of Ayurvedic practitioners. Please refer to other relevant WHO guidelines for general safety issues in the use of herbal medicines. The community of practitioners of Ayurveda notes that adverse events may be caused by contamination, adulteration, misidentification, inappropriate use of species and/or prescribing dosages above accepted levels. ...

A medicinal plant should never be collected from an anthill, a dirty or marshy place, gravelly land, a graveyard or a footpath. A plant infected or spoiled by fire, cold, water or any other damage should not be used for preparing a medicine. ...

Agni[fire]*karma*[action] should not be performed in the autumn or summer, on a person of *paittika* [one of the three doshas - humours] constitution, a patient with internal haemorrhage, ruptured viscera or an unextracted foreign body, debilitated person, children, aged persons, timid persons or those with multiple wounds or contraindicated for *svedana* [sudorific]. ...

***Viruddha ahar* (incompatible dietary combinations) including:**
- fish and milk
- ...
- frying of long pepper in the same oil in which fish has been fried."

where the 'methodology' underlying this last choice, as well as the 'sanctity' of the scriptures, derives clearly from a frame of criteria well outside WHO(2000)!

In the Traditional Chinese medicine Benchmarks we find:

"Processing techniques were further systematically compiled and introduced as guidelines for herbal processing during the Song Dynasty (960 – 1279 AD) [and so, well before WHO (2000)!]. ...

Traditional Chinese medicine has been practiced in China for over 2,000 years. TCM was developed empirically from clinical experience, and documented in many classical texts ...

Traditional Chinese medicine philosophy differs significantly from other healthcare modalities and this strongly influences the attitude and approach of TCM in health care. Traditional Chinese medicine is guided by a unique theoretical paradigm with key concepts such as the *yin* and *yang* theory, the five elements theory, the *qi*, blood and body fluids theory, and the differential diagnosis of syndromes. ...

Students are expected to be able to identify and evaluate the quality of approximately 250 kinds of commonly used Chinese Materia Medica:

- Introduction to storage and factors that affect quality of Chinese Materia Medica;
- Routine inspection and management of stored Chinese Materia Medica, as well as methods for maintenance;
- Temperature and humidity control in a warehouse;
- Pest and moulding control;
- Measures to protect Chinese Materia Medica in storage and other factors that affect quality. ...

Health regulations within the context of prescribing in TCM:
Upon completion of this subject, students are expected to be able to explain the legal requirements relating to TCM practice, including the relevant local health acts, legal responsibilities, standards of practice and related regulations, such as endangered species, and the protection and management of toxic Chinese Materia Medica.

In classical texts, eighteen incompatible herbs (*Shi Ba Fan*) and nineteen antagonistic herbs (*Shi Jiu Wei*) are documented as being incompatible with TCM prescription. This is an important concept, even though current knowledge does support the use of some of the combinations. TCM practitioners and expert recommend extreme caution in the use of such combinations."

In both Benchmarks, lists of medicinal herbs with their therapeutic use and potential incompatibilities are given; but no mention is made of the fact that, according to the WHO's guidelines, the assessment of the real actions of traditional herbs and of their relative safety could and should not be based only on 'old sacred scriptures', 'classical texts' and so-called 'ancestral' tradition, but on modern, 'scientific' (even if this term has been disparagingly quoted) methods.

It is hard to see from these examples a WHO pursuing with intense decision the discussion, improvement, generalisation of its methodological guidelines. Where this timidity comes from?

As the domain of TMK is now practically escaping the reach of WHO to be more and more absorbed by WIPO throughout its GRTKF program (where 'methodology' seems to be the last of their worries), WHO's methodological guidelines tend to become a sort of intellectual (and Western, beware!) exercise of vanishing relevance. It is however clear that the role of WHO is a bit lost, in the cloudy space that has been forming, where 'belief', 'opinion', 'tradition' and 'knowledge' dance together in a calm, consensual, happy and non polemical synthesis.

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add 4.a Velásquez et al (2015)

Chapter 5

WHILE TRYING TO REMEMBER AN ANCESTRAL TK-CE CAKE RECIPE FROM HIS GRANDMOTHER



Chapter 5 - From TMK to GRTKF to perhaps GRTKFR

Introduction to Chapter 5

We are entering now into a dangerous landscape. The label on the gate there seems to advertise only: TK, but it is an old, obsolete label; no one thought of changing it. Perhaps it is consciously kept there as a misnomer, just to attract the naive Maze-tourist, the one who had not the privilege to perform his/her visit within the present Guide. Like a trap: you think you are visiting only TK (as a 'We', remember what we told you in Chapter 0!), just out of curiosity about the strange, 'ancestral' prejudices of 'They', and then you are thrown into the boiling magma of GRTKF!

TK (which includes, as you know, TMK as a subspace) was the germ of this huge, confusing and continuously growing space that we characterized as 'the Maze'. If you will follow us in our guided trip, you will find that - starting from TMK growing into TK - Genetic Resources (GR) sneaked in and even took first place in GRTK, followed by Folklore (F) to fill the whole GRTKF; but candidates abound for next growth season, in particular Cultural Expressions (CE) that will, probably, supersede F in the future, and - even worse - Rituals (R).

We shall start this (the hardest part of our trip) immersion into GRTKF by digging more on TK that is its obvious ante-room and is still, notwithstanding its loss of first place to GR, the real, deeper, denser and older frame in which both GR (see 5.a), F (see 5.b), and possibly R (see 5.c) can be understood.

As an appetizer, let us meet at once one of the frequent verbal exaggerations that spoil most of the representations of TK:

"Barasana people of the Northwest Amazon of Colombia believe that man and nature are one. Their philosophy of interconnectedness has given rise to land management practices that minimize the impact of the Barasana on the environment. In 1991 the Colombian government granted the Indian peoples of the Northwest Amazon legal land rights to an area the size of the U.K. Thanks to that decision, the once endangered Barasana are experiencing a powerful rebirth. They are among the rare lucky ones."
Davis (2010), passim

No one will ever know - but no one will ever ask! - what those 'land management practices' were ('interconnectedness' being a frequent avatar of our by now familiar 'mantra': 'holistic'. And which are the criteria to judge a 'rebirth'? Better not to ask ...

To try and answer the questions that the innumerable items of this sort, easily found in the Maze, raise in our mind (together with some irritation, due to their vagueness and possible bad faith), we have to start from far away, from some tentative reflections on that, that is generally called IKS: Indigenous Knowledge System' (or perhaps 'Systems'). Let us read from a card from old, but generally trustworthy Frazer:

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5. [TK and IKS (Indigenous Knowledge System(s)); card-Frazer (1925)]

"A savage hardly conceives the distinction commonly drawn by more advanced peoples between the natural and the supernatural. To him the world is mostly worked by supernatural agents, that is, by personal beings acting on impulses and motives like his own, liable like him to be moved by appeals to their pity, their fears, and their hopes. In a world so conceived he sees no limit to his power of influencing the course of nature to his own advantage. Prayers, promises, or threats may secure him fine weather and an abundant crop from the gods; and if a god should happen, as he sometimes believes, to become incarnate in his own person, then he need appeal to no higher power. ...

This is one way in which the idea of a man-god is reached. But there is another. Side by side with the view of the world as pervaded by spiritual forces, primitive man has another conception in which we may detect a germ of the modern notion of natural law or the view of nature as a series of events occurring in an invariable order without the intervention of personal agency. The germ of which I speak is involved in that sympathetic magic, as it may be called, which plays a large part in most systems of superstition. One of the principles of sympathetic magic is that any effect may be produced by imitating it. To take a few instances. If it is wished to kill a person an image of him is made and then destroyed; and it is believed that through a certain physical sympathy between the person and his image, the man feels the injuries done to the image as if they were done to his own body, and that when it is destroyed he must simultaneously perish.

Again, in Morocco a fowl or a pigeon may sometimes be seen with a little red bundle tied to its foot. The bundle contains a charm, and it is believed that as the charm is kept in constant motion by the bird a corresponding restlessness is kept up in the mind of him or her against whom the charm is directed. In Nias when a wild pig has fallen into the pit prepared for it, it is taken out and its back is rubbed with nine fallen leaves, in the belief that this will make nine more wild pigs fall into the pit just as the nine leaves fell from the tree. When a Cambodian hunter has set his nets and taken nothing, he strips himself naked, goes some way off, then strolls up to the net as if he did not see it, lets himself be caught in it and cries, “Hillo! what's this? I'm afraid I'm caught.” After that the net is sure to catch game. In Thüringen the man who sows flax carries the seed in a long bag, ... so that the bag sways to and fro on his back. It is believed that this will cause the flax crop to wave in the wind. In the interior of Sumatra the rice is sown by women who, in sowing, let their hair hang loose down their back, in order that the rice may grow luxuriantly and have long stalks.

Again, magic sympathy is supposed to exist between a man and any severed portion of his person, as his hair or nails; so that whoever gets possession of hair or nails may work his will, at any distance, upon the person from whom they were cut. This superstition is world-wide. ... Hence, for example, the elaborate code of rules which regulates the conduct of persons left at home while a party of their friends is out fishing or hunting or on the war-path." (pp.13 ff)

Frazer (1925)

Clearly, 'We' can feel some sympathy with this word-view, where everything is felt as connected to everything else; but it is 'Their' world-view; can you adhere to it? can you, honestly, at least respect it? in the genuine GRTKF WIPO spirit, you have to, otherwise how could you go on talking on IPRs, 'sui generis' IPRs, protection and promotion of TK?

But things get darker in next two cards:

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5. [TK and IKS (Indigenous Knowledge System(s)); card-incest in Africa]

"Folktales are told at designated times for entertainment and perhaps to convey some simple moral lessons to children. The exploits and misadventures of Àjàpá [the tortoise, Yoruba], one of a most popular character in folktales, are riotously funny, and they are easily comparable to trickster characters in other African societies. Àjàpá is at once clever and pathetically stupid and, like all tricksters, displays delightful negative social values and engages in abominations like murder, incest, and cannibalism."

Stevens (2010)

"Taboo, the prohibition of certain acts or the injunction against consumption of certain species, even the prohibition of certain numbers, is found in various configurations throughout Africa. ... Taboo often functions to sustain social and religious order and, as such, might be accorded a divine origin or given pre-eminence in mythology. Taboo is often logical, in preserving animals, plants, or their habitats, or in forbidding certain categories of sexual relations (e.g., incest). At other times, it may seem illogical in denying s primary source of proteins ... The use of myth op explain taboo is a recurrent phenomenon in African thought. This process might be functional in explaining species prohibition as just described or other taboos such as those surrounding incest. ... When the primeval creature Ogo, in his haste to create a world for himself, penetrate a piece of placental tissue in the hope of locating his twin sister, and in so doing commits an act analogous to maternal incest (taboo), a race of monstrous deformed beings is created. Similarly, in the mythology of the Bambara, also an ethnic group from Mali, the consequences of the incestuous coupling of Musokoroni and her twin brother, Pemba, are profound. In breaking the sexual taboo, both sink into lust, and this act raises an unbearable stench, forcing God to purify the universe."

Insoll (2010)

"Witchcraft (*mangu*) is a mystical power that develops inside the body, perhaps without its bearer's knowledge, and when activated by negative emotions it can transform itself, fly, and do terrible things by itself, without the assistance of magic or spirits. ... Witches engage in whatever sexual behavior the society considers as abhorrent, always including incest, and perhaps homosexuality, pedophilia, and bestiality."

Stevens (2010a)

"Some societies adopted the circumcision practices as part of the assimilation process of other ethnical groups. The groups historically known not to circumcise may do so in rare occasions as part of ritual in their belief system. The Nuer of Sudan, for instance, occasionally circumcise to cleanse people who commit incest."

Mulemi (2010a)

[for a modern, "Western", sensible appraisal of circumcision, see Denniston et al (2009)]

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5. [TK and IKS (Indigenous Knowledge System(s)); card-sexual mutilations]

"Circumcision essentially involves the removal of the prepuce from the glans penis and the clitoris. Female circumcision might include complete removal of the clitoris or the labia. In some African cultures circumcision is performed on both male and female genitalia for social, cultural, and ritual purposed. Compared to other continents, Africa leads in traditional female and male circumcision practices, with female circumcision practiced in more than 28 countries. Non circumcision societies acquired the practice from neighboring communities and the diffusion of cultural or ritual institutions. Some societies adopted the circumcision practices as part of the assimilation process of other ethnical groups. The groups historically known not to circumcise may do so in rare occasions as part of ritual in their belief system. The Nuer of Sudan, for instance, occasionally circumcise to cleanse people who commit incest.

The degrees, types, and techniques of circumcision in traditional African societies vary with clans and ethnic groups. The different forms reflect different origins of the practice, clan, ethnic, and sub-ethnic identity symbols, and the social and aestetic values linked to sex organs.

Some male circumcision options involve the removal the inner surface of the foreskin, leasing the outer layer for alteration purposed. ... Members of communities with detailed male circumcision procedures, such as the Tiriki, Maasai, Meru, Kikuyu, and Somali of East Africa, take pride in their own types as superior and full form of circumcision. ...

Intrinsic cultural, social, and religious values underpin the persistence of different forms of female circumcision and initiation in Africa. This shaped revival, diffusion of the practices, and discreet female circumcision rituals by some African in Africa and the diasporas. .... As observed in Kenya and Gambia, local people may resist the alternative 'coming-of-age pedagogy' owing to the perception that the programs represent foreigners' strategy to undermine traditional institutions and values. ...

In some African beliefs systems, circumcision is seen as necessary to remove either the female or the male aspects from the anatomy of the initiate to eradicate the contamination effect of these elements on the fecundity and life of a person. So-called sexual duality is believed to cause personality ambiguity, disorder, and infertility. Among the Dogon and the Bambara of Mali, uncircumcised children are believed to have both masculine and feminine souls and elements. ... In Africa, people who evade circumcision when it is mandatory in their culture are regarded as outcasts and a source of community defilement, and are viewed as unmarriageable, they risk being circumcised by force. ... For the Abaluhyia people of Western Kenya, circumcision is linked with shedding of impure blood. "

Mulemi (2010a), passim

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5. [TK and IKS (Indigenous Knowledge System(s)); card-circumcision]

"Botched circumcisions killed 30 young men and landed almost 300 more in hospital during traditional initiation rites in a South African province, the health department said Sunday.

The 30 deaths in rural Eastern Cape province occurred during the annual season when young males undergo a rite of passage into manhood. Ten other youths were hospitalised after being rescued from a forest on Sunday, said provincial health department spokesman Sizwe Kupelo in a statement. 'The ten initiates' private parts are rotten. They are badly damaged. Their condition is scary', he said.

A further 293 young men were undergoing hospital treatment for dehydration, gangrene and septic wounds, Kupelo added. Some had lost their genitals. Teenagers from ethnic Xhosa, Sotho and Ndebele groups typically spend around a month in secluded bush or mountains areas for their initiation to manhood. This includes a circumcision as well as lessons on masculine courage and discipline. Traditional surgeons perform the procedure in the bush, sometimes with unsterilised instruments or lacking in technique.

Botched circumcisions leading to penis amputations and deaths are an annual tragedy. In May around 34 deaths in two other provinces were reported.

The ruling African National Congress said Sunday it was "distressed" over the latest deaths. It called for basic medical training of the traditional surgeons to render 'an entrenched and necessary part of our cultural fabric' safer."

AFP/AFP/File - Qunu, South Africa, on June 28, 2013

The 'Western' world (namely 'WE') is going through an intense period of re-thinking about a number of prejudices and taboos that have dominated our thinking, feelings and behaviour for centuries. Those against homosexuality, bi-sexuality, trans-sexuality, are now labelled as '... phobies'. Definitions of misdemeanour for incest between consenting adults are being cancelled from the Law Code Books of many European Countries. The performance of circumcision on non-consenting babies has been challenged recently by German Courts. 'Sexual mutilations' are banned and condemned everywhere; 'Traditional circumcision' can be deadly.

What shall we therefore do with 'Their' positions on these troubled, obscure components of social behaviour? 'Respect' them? criticize them? or perhaps help them - by some still undefined form of 'sui generis' IPRs on their CE TK - to 'protect' and 'propagate' them?

Even if a balanced (far from the un-critical admiration!) analysis of the centuries of painful searching for 'meaning' of and in the universe lead, no doubt, to our present world-view:

- "Avec une économie domestique qui est toujours largement basée sur les produits de la chasse, de la pêche et de la cueillette, les Aborigènes du Nord de l'Australie ont maintenu une connaissance très poussée des cycles de reproduction et des comportements animaux, et des différents habitats dans lesquels ils évoluent." Colombo Dougoud et al (2010), p.97

- "The corporate structure of the medieval craft economy also influenced attitudes toward public disclosure of technical secrets. ... Economic realities compelled craftsmen to keep the secrets of the arts guarded from public view. ... Such 'trade secrets' were valuable intellectual property. ... [on a 1389 Nuremberg manuscript on iron and steel hardening] The Nuremberg smith listed more than a dozen recipes for such compound quenching baths. Scytes, for example, were best hardened in suet, while files should be quenched in a mixture of linseed oil and goat's blood. ... By what criteria were such ingredients selected? Practical experience was certainly the most common guide, and probably the most reliable. But it appears that simple trial and error was supplemented by folklore and by analogical reasoning about the properties of materials. It has been suggested that the idea of adding plant and animal materials to quenching baths was based upon an analogy with medicine, the idea being to 'treat' deficiencies in metals with various 'drugs'. ... The first patent law was enacted in 1474 in Venice. The law justified the protection of intellectual property on strictly economic grounds: '*If provision were made for the works and devices discovered by such persons, so that others who may see them could not build on them and take the inventor's honor away, more men would apply their genius, would discover, and would build devices of great utility and benefit to our commonwealth*'." Eamon (1994), p.81 ff

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5. [TK and IKS (Indigenous Knowledge System(s)); card-'feitiços']

"A mãe da nely morreu de feitiço:

NELY – Minha mãe morreu de feitiço. A mulher do pai da minha filha colocou feitiço nela e ela morreu. Minha família diz que foi por minha culpa.
- EU – Nely, isso não é possível. Ninguém morre de feitiço.
NELY – Morre, morre sim.
- EU – Mas qual foi o motivo da morte dela? O que está escrito na certidão de óbito?
NELY – Não sei.
- EU – Mas o médico deve ter dito alguma coisa.
NELY – Os médicos em São Tomé também não sabem. Quando as pessoas têm alguma coisa que eles não conseguem explicar, mandam para o curandeiro.
- EU – O médico mandou sua mãe para o curandeiro?
NELY – Sim, mandou. Minha mãe morreu com 33 anos. Ela não era doente. Ficou com as pernas paralisadas e morreu.

A mãe de Nely morreu em fevereiro deste ano.

Nely estava em Angola e não teve como ir ao enterro.

Para nós, ocidentais, As crenças em feitiços e magias parecem-nos algo tão irreal e distante que não somos sequer capazes de imaginar o como são importantes para que com eles convide desde pequeno. As coisas inexplicáveis têm de ter uma justificação. Às vezes, só mesmo um feitiço é capaz de o fazer...

A Nely já tem um feiticeiro poderoso a trabalhar para ela.

Lorena disse:

'Jornalista, você contou pra Nely que aqui se diz que essa coisa de feitiço costuma virar contra o feiticeiro? Não? E disse que ninguém tem o PODER de matar ninguém só com feitiço? Já pensou se isso fosse possível? O que costumam fazer por esse mundo afora, é usarem objetos mais paupáveis para darem conta do recado. O mundo, a África, aqui, ali, estão cheios de exemplos do gênero. Opa,opa,opa!!!! Passei de novo por aqui, li o que escrevi e estou sem palavras!!! De qualquer forma, tem certos erros de ortografia que quando a gente comete, é melhor nem falar nada mesmo. Fazer o quê? Bem diz o dito: boca fala, boca paga. Isso deve ser porque "impliquei" com as fotos e filmagens do blog. Quando implicar da próxima vez serei mais cuidadosa depois. Hehehe...' "

diário da África
segunda-feira, 22 de dezembro de 2008

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The exchange:

EU: "Nely, isso não é possíbel. Ninguém morre de feitiço"
NELY: "Morre, morre sim"

(where EU is not the European Union, but 'I' in Portuguese),

synthesizes perfectly the present incommunicability between 'We' and 'They'.

But should we accept it? or perhaps fight against it? or try and find a common understanding?

Several options, but sure we would be awfully hypocritical if we kept always silent!

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5. [TK and IKS (Indigenous Knowledge System(s); card-Niyi Afolabi (2010)]

"The anti-colonial struggle is central to the development of lusophone African literature and thought. But although the reaction against Portuguese oppression was given expression in militant accents, there was little scope for the celebration of the native cultures; the emphasis was on the revolutionary potential of literature. A major impediment to the development and dissemination of an African-centered thought in lusophone Africa can be attributed to the degenerative force of the Portuguese colonial experience in Africa. While efforts are currently being made by scholars to recuperate indigenous thought in the areas of religion, politics, culture, language, anthropology, literature and philosophy, the oral tradition, the ultimate repository of indigenous knowledge systems, has been threatened for centuries by the imposition of Western thought and the Portuguese language. From the pre-colonial era through the armed struggle and post-independence era, lusophone African thought has never ceased to exist. ...

Beyond the tropical and colonial mythologies, thought in lusopone Africa is located in practically every part of daily living, from proverbs, adages, newspapers chronicles, short stories, poems, traditional religious belief systems and practices, and even in political engineering, mobilization and governance. ...

While Amilcar Cabral's call for 'return to the sources' may be idealistic from the viewpoint of the structures already paralyzed by Portuguese imperialism, the liberation struggle nonetheless depended on what Cabral calls the 'act of culture' - that is, the negation of the negation instituted by the colonizer. ...

The central thrust of Langa's formulation [A.Langa: Questões cristãs à religião tradicional africana, 1992] lies in the validity of spirits, ceremonies, and rituals, ... the need for cultural sensitivity when one enters the domain of spirit mediation between the living and the dead. Through spirit mediums, the gods and the dead communicate with the living; they prophesy and guide the living on the paths of life; they reinforce myths and evoke traditions - all in the interest of mobilizing their consciousness toward allegiance and liberation."

Niyi Afolabi (2010), passim

We are here confronted with the incredibly efficient and revolutionary 'act of culture', necessary to get rid of centuries of colonial oppression and intellectual genocide; that is a hard, inevitable confrontation between 'We' and 'They'. But will 'They' gain anything by going back to 'traditional religious belief and practices'? While, at the same time, 'We' are trying to get rid of our own 'traditional religious belief and practices'?

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5. [TK and IKS (Indigenous Knowledge System(s)); card-Tengan (2010)]

"Since the dawn of African cultural history, African thought has focused on the development of elaborate funeral and other mortuary rites for the dead and the 'living dead' and ancestors in order to ensure that each individual at death makes the appropriate transition into the afterlife and takes up an appropriate position in that environment. ... Where there is safe passage, an appropriate and permanent position within the 'living dead' is assured in the world of the afterlife and the ancestors. Where there is no safe passage, the individual moves into a invisible world of lost beings and spirits. ... For most African societies and people, social and cultural expressions, including religion, art, literature, and economical activities, have always directly and indirectly included forms of communication and thought processes about and between the invisible world of the lost beings and spirits on one hand, and with the world of the 'living dead' and divine brings on the other." (pp.282-284)

Tengan (2010)

Funeral rites are still so deeply imbedded into our dealing with the death - even if it is hard to know (or perhaps to believe) that those who follow them 'believe' in them, or perhaps 'follow' them by social convenience - that the African IKS described in this card will not surprise our fellow-travellers around the Maze. But, can really anyone dare and speak for 'most African societies and people'? Here, deepening the discussion we tried in Chapter 1, on 'belief, opinion, prejudice, superstition, knowledge, ... ' would be specially needed.

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5. [TK and IKS (Indigenous Knowledge System(s)); card-Rubin (2012)]

"Afghan girls forced to pay for elders' sins

Shakila, 8 at the time, was drifting off to sleep when a group of men carrying AK-47s barged in. She recalls them complaining, as they dragged her off into the darkness, about their family had been dishonored and about how they had not been paid. It turns out that Shakila, who was abducted as part of a traditional Afghan form of justice known as 'baad', was the payment. ...

Although baad (also known as baadi) is illegal under Afghan and, most religious scholars say, Islamic law, the taking of girls as payment for misdeeds committed by their elders still appears to be flourishing. Shakila, because one of her uncles had run away with the wife of a district strongman, was taken and held for about a year. It was the district leader, furious at the dishonor that had been done to him, who sent his men to abduct her.

Shakila's case is unusual both because she managed to escape and because she and her family agreed to share their plight with an outsider. The reaction of the girl's father to the abduction also illustrates the difficulty in trying to change such a deeply rooted cultural practice: he expressed fury that she was abducted because, he said, he had already promised her in marriage to someone else.

'We did not know what was happening', said Shakila, now about 10, who spoke softly as she repeated over and over her memory of being dragged from her family home. 'They put us in a dark room with stone walls; it was dirty and they kept beating us with sticks and saying: Your uncle ran away with our wife and dishonored us, and we will beat you in retaliation'.

Despite being denounced by the United Nations as a 'harmful traditional practice', baad is pervasive in rural southern and eastern Afghanistan, areas that are heavily Pashtun, according to human rights workers, women's advocates and aid experts. Baad involves giving away a young woman, often a child, into slavery and forced marriage. It is largely hidden because the girls are given to compensate for 'shameful' crimes like murder and adultery and acts forbidden by custom, like elopement, say elders and women's rights advocates.

The strength of the traditional justice system and the continuing use of baad is a sign both of Afghans' lack of faith in the government's justice system, which they say is corrupt, and their extreme sense of insecurity. Baad is most common in areas where it is dangerous for people to seek out government institutions. Instead of turning to the courts, they go to jirgas, assemblies of tribal elders, that use tribal law, which allows the exchange of women.

'There are two reasons people refuse the courts — first, the corrupt administration, which openly demands money for every single case, and second, instability', said Hajji Mohammed Nader Khan. 'Also, in places where there are Taliban, they won't allow people to go to courts and solve their problems'. "

Rubin (2012), passim

As for incest and sexual mutilations, if we were asked to judge 'baad', we would have no doubts: 'the verdict is out': condemnation! But how and why throw this extreme example of Cultural Expressions into the garbage bin? Who is posing the border between amusing, 'folklore', 'ancestral' Cultural Expressions - validly introduced into GRTKF+CE - that are often performed for 'Western' Television Networks, and 'baad'? Is it that, not only the meaning of words, but also the feasibility of actions, depend only on those 'in command'? (either by weapons or by grants?)

Please, read now something about the effects of some TK and IKS in Africa on albino people, on twins and on children accused of **witchcraft**':

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5. [TK and IKS (Indigenous Knowledge System(s)); card-albinos (2010-2013)]

"Persecution of people living with albinism:

It is estimated that over 150,000 albinos live in Tanzania; 8,000 of these are registered with the Tanzania Albino Society (TAS). A number of albinos have fled to the Dar es Salaam area as they feel safer in an urban setting. Tanzania is thought to have the largest population of albinos in Africa. In December 2007 the Tanzania Albino Society accused the government of inactivity in the face of four albino killings over the previous three months. While older albino women with red eyes had been at risk for being murdered sporadically in the past as witches, this killing spree may have been the beginning of the ongoing persecution of albinos with the intent to harvest the victims' body parts. With escalating killings, President Kikwete publicly and repeatedly condemned witch doctors, their helpers and middlemen, and the clients, which include members of the police force, for these murders. Victims include children snatched or abducted from their parents.

The killers and their accomplices use hair, arms, legs, skin, eyes, genitals, and blood in rituals or for witch potions. Fishermen incorporate albino hair into their nets in their hope to catch more fish from Lake Victoria or to find gold in the belly of the fish that they catch. In addition, an albino woman, Al-Shymaa Kway-Geer, was named to become a member of the parliament, the first albino in such a position in the history of Tanzania. Police have also been advised to generate lists of albinos and provide special protection for them.

To foil graverobbers, graves of the albinistic were to be sealed with concrete. However, by October 2008, killings had not abated, and while some suspects had been apprehended, no convictions had taken place. It was estimated that over 50 murders had taken place since March 2007, many of them in the mining and fishing communities near Lake Victoria, especially at Mwanza, Shinyanga and Mara. In January 2009, 'Prime Minister Pinda had declared war on the albino hunters, and in an effort to stop the trade in albino body parts he had revoked the licenses of all the country's witch doctors who use the body parts in their black magic fetishes'. The first ever conviction for the killing of an albino in Tanzania occurred on 23 September 2009 at the High Court in Kahama. The conviction came about following the murder and mutilation of a 14-year-old boy, Matatizo Dunia, who was attacked by three men in Bukombe district in Shinyanga Region in December 2008. The men carried Dunia from his home late at night before chopping him into pieces. One of them was later found with Dunia's leg in his possession. The rest of Dunia's body parts were located concealed in shrubbery. The men confessed a desire to sell Dunia's parts to a witch doctor ... By June 2008 killings had been reported in neighboring Kenya and possibly also the Democratic Republic of Congo. In October 2008 AFP reported on the further expansion of killings of albinos to the Ruyigi region of Burundi. Body parts of the victims are then smuggled to Tanzania where they are used for witch doctor rituals and potions. Albinos have become 'a commercial good', commented Nicodeme Gahimbare in Ruyigi. By 2010 cases had also been reported from Swaziland."

albinos (2010-2013), passim

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5. [TK and IKS (Indigenous Knowledge System(s); card-twins (1958)]

- "They were returning home with baskets of yams from a distant farm across the stream when they heard the voice of an infant crying in the thick forest. A sudden hush had fallen on the women, who had been talking, and they had quickened their steps. Nwoye had heard that twins were put in earthenware pots and thrown away in the forest, but he had never yet come across them." ch.7

- "Obierika was a man who thought about things. When the will of the goddess had been done, he sat down in his obi and mourned his friend's calamity. Why should a man suffer so grievously for an offence he had committed inadvertently? But although he thought for a long time he found no answer. He was merely led into greater complexities. He remembered his wife's twin children, whom he had thrown away. What crime had they committed? The Earth had decreed that they were an offence on the land and must be destroyed. And if the clan did not exact punishment for an offence against the great goddess, her wrath was loosed on all the land and not just on the offender." ch.13

- "Do you know how many children I have buried--children I begot in my youth and strength? Twenty-two. I did not hang myself, and I am still alive. If you think you are the greatest sufferer in the world ask my daughter, Akueni, how many twins she has borne and thrown away. Have you not heard the song they sing when a woman dies? 'For whom is it well, for whom is it well? There is no one for whom it is well.' " ch.14

- "Nneka had had four previous pregnancies and childbirths. But each time she had born twins, and they had been immediately thrown away. Her husband and his family were already becoming highly critical of such a woman ..." ch.17

- "The young church in Mbanta had a few crises early in its life ... But it had gone on living and gradually becoming stronger. The clan was worried, but not overmuch. If a gang of efulefu decided to live in the Evil Forest it was their own affair. When one came to think of it, the Evil Forest was a fit home for such undesirable people. It was true they were rescuing twins from the bush, but they never brought them into the village. As far as the villagers were concerned, the twins still remained where they had been thrown away. Surely the earth goddess would not visit the sins of the missionaries on the innocent villagers? ... These outcasts, or osu, seeing that the new religion welcomed twins and such abominations, thought that it was possible that they would also be received. And so one Sunday two of them went into the church. ... 'They said I would die if I took care of twins. I am still alive. The heathen speak nothing but falsehood. Only the word of our God is true'. " ch.18

- "They guarded the prison, which was full of men who had offended against the white man's law. Some of these prisoners had thrown away their twins and some had molested the Christians. ... Some of these prisoners were men of title who should be above such mean occupation." ch.22

Chinua Achebe (1958) [Igboland, Nigeria, XIX C.)]

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5. [TK and IKS (Indigenous Knowledge System(s); card-UNICEF (2010)]

"This study addresses the issue of children who are victims of violence and mistreatment due to local beliefs, representations and practices, in particular, relating to witchcraft. While the harmful consequences of these beliefs have been publicised internationally, their origins often remain unclear. The objective of the present document, therefore, is to reveal and analyze the diversity and complexity of these phenomena - often falsely associated with 'African tradition' - related to beliefs in witchcraft and the 'mystical' world. ...

Witchcraft accusations against children

Children accused of witchcraft are subject to psychological and physical violence, first by family members and their circle of friends, then by church pastors or traditional healers. Once accused of witchcraft, children are stigmatized and discriminated for life. Increasingly vulnerable and caught in a cycle of accusation, they risk yet further accusations of witchcraft. Children accused of witchcraft may be killed, although more often they are abandoned by their parents and live on the street. ... Often victims of sexual exploitation, they are at increased risk of exposure to sexually transmitted diseases and HIV infection.
Belief in witchcraft is widespread across sub-Saharan African countries. It was previously believed that these beliefs and socio-cultural practices would disappear over time, but the current situation indicates the contrary. Far from fading away, these social and cultural representations have been maintained and transformed in order to adapt to contemporary contexts. ... For this reason, contemporary witchcraft can no longer be explained in terms of 'African tradition'. Without wishing to ignore the history and culture of witchcraft, the current forms of belief are more a product of an 'invented tradition', or perhaps a reinvented tradition. ... The notion of witchcraft, despite its suggestion of multiple abilities, can perhaps be defined, in a large majority of African countries, as the ability to harm someone through the use of mystical power. Consequently, the sorcerer or witch embodies this wicked persona, driven to commit evil.

Which children are most vulnerable to accusations of witchcraft?

Vulnerable children accused of an act of witchcraft can be divided into three categories.
- The first category, which includes thousands of children, refers to the urban phenomenon of 'child witches'. These children are typically orphans who have lost one or both natural parents; children with a physical disability (or any physical abnormality, including a large head, swollen belly, red eyes, etc.); those with a physical illness (epilepsy, tuberculosis, etc.) or disability (autism, Down Syndrome, etc., or even those who stutter). ...
- The second category covers children whose birth is considered abnormal ... Also included are twins, who are sometimes associated with the occult, their birth symbolizing the evil or anger of the gods.
- The third and final category concerns children with albinism who are killed because of the magic powers supposedly contained in parts of their bodies, including their organs, hair, skin and limbs."

UNICEF (2010)

This is our last card on TK and IKS; prejudice can be lethal to people (as it is here, on albinos), or to entire populations, communities, ... (as a source of racism against them). When and how shall the Maze shut its doors to these items? When and how will a number of expressions of TK, G and CE become 'out of bound' in the Maze? And, who will supervise the 'purity' of the Maze, and how? And, who will decide on the 'purity' of an item desiring to enter the Maze, and how?

But, shall we always be 'We'?

You would assume that the indigenous and local communities invited to participate to the feast preparatory to the institution of a '*sui generis*' IPRs on TK would know - at least in a broad ouline - **what** this TK would/should be in order to ask for a '*sui generis*' recognition and therefore to be allowed into the holy graal of global, universal, useful 'knowledge'. But it is not so: WIPO has felt it necessary to organize 'Practical Workshops' for them to learn:

"The objectives of the Practical Worshop were:

- impart basic knowledge of the main principles of the intellectual property (IP) system from a traditional knowledge (TK) perspective, emphasizing both the potential value that IP could bring in support of TK protection and the gaps within the IP system that might need to
- explain the rationale, objectives and methodology of the negotiations that are taking place in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore;
- raise awareness of the available IP tools and WIPO materials that are relevant to the protection of TK."

WIPO (2013e)-Objectives

And so, WIPO can be seen more as an organisation peddling its TK program (inviting indigenous and local communities to dig out some 'ancestral' TK in order to apply for a 'fair share' of the global market) than as an organisation sentitive and listening to local needs and exigencies.

We are afraid we gave our fellow-traveller into the Maze - by our choice of cards - the idea that everything that was doubtful or even dangerous in the GRTKF space originated from Africa (or, anyway, from 'Them'). But we are quite aware of the number of 'casseroles' (to use an expressive French metaphor: saucepans) our so-called 'civilisation' is trailing behind.

Let us just start from its solid, cultural foundations: our scholarly heroes, our beloved 'classics', our own witnesses of our 'ancestral wisdom':

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5. [ancient Greek TK - agriculture et al; card-Aratus]

"[765] For oft, too, beneath a calm night the sailor shortens sail for fear of the morning sea. Sometimes the storm comes on the third day, sometimes on the fifth, but sometimes the evil comes all unforeseen. For not yet do we mortals know all from Zeus, but much still remains hidden, whereof, what he will, even hereafter will he reveal; for openly he aids the race of men, manifesting himself on every side and showing signs on every hand. Some messages the Moon will convey with orb half-full as she waxes or wanes, others when full: others the Sun by warnings at dawn and again at the edge of night, and other hints from other source can be drawn for day and night.

[778] Scan first the horns on either side the Moon. For with varying hue from time to time the evening paints her and of different shape are her horns at different times as the Moon is waxing – one form on the third day and other on the fourth. From them thou canst learn touching the month that is begun. If she is slender and clear about the third day, she heralds calm: if slender and very ruddy, wind; but if thick and with blunted horns she show but a feeble light on the third and fourth night, her beams are blunted by the South wind or imminent rain. ... If her upper horn nod forward, expect thou the North wind, but if it lean backward, the South. But when on the third day a complete halo, blushing red, encircles her, she foretells storm and, the fierier her blush, the fiercer the tempest.

[799] Scan her when full and when half-formed on either side of full, as she waxes from or wanes again to crescent form, and from her hue forecast each month. When quite bright her hue, forecast fair weather; when ruddy, expect the rushing wind; when dark stained with spots, look out for rain. ... But if halos encircle all the Moon – with the single ring, expect wind or calm; when the ring is broken, wind; when faint and fading, calm; two rings girding the Moon forebode storm; a triple halo would bring a greater storm, and greater still, if black, and more furious still, if the rings are broken. Such warnings for the month thou canst learn from the Moon.

[819] To the Sun’s march at East and West give heed. His hints give even more pertinent warning both at setting, and when he comes from below the verge. May not his orb, whenever thou desirest a fair day, be variegated when first his arrows strike the earth, and may he wear no mark at all but shine stainless altogether. If again thus all pure he be in the hour when the oxen are loosed, and set cloudless in the evening with gentle beam, he will still be at the coming dawn attended with fair weather.

[832] Scan closely, if his beams allow thee, the Sun himself, for scanning him is best, to see if either some blush run over him, as often he shows a blush or here or there, when he fares through trailing clouds, or if haply he is darkened. Let the dark stain be sign to thee of coming rain, and every blush be sign of wind. But if he is draped both black and red at once, he will bring rain and will strain beneath the wind. But if the rays of the rising or setting Sun converge and crowd on one spot, or if he go from night to dawn, or from dawn to night, closely beset with clouds, those days will run in company with rushing rain. ... But fear the coming rain when on a sudden the Sun’s rays seem to thin and pale – just as they often fade when the Moon overshadows them, what time she stands straight between the earth and Sun."

Aratus, passim

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5. [ancient Greek TK - agriculture et al; card-Hesiod]

"(582) When the artichoke's in bloom and the cidada in the tree, the musical cidada, spreads continua melody, sweet-toned from beneath its wings in the wearying summer season, then the goats are fattest and the wine is at its best, the women are most wanton and the men are most depressed. When Sirius the dog star dries the head up and the knee, and skin is parched under beneath the burning sun, then let there be some shade beneath a rock and wine from Biblos and the bread that's made from milk and milk from goat - the last the kids are fed before they are weaned - and meat from newborn kids and leaf-fed kine that haven't given birth; and then you drink the sparkling wine, sitting in the shade and filled with food, your heart at ease, faced in the direction of a strong Zephyrean breeze, and from an even-flowing stream - unmuddied, clear, and clean - pour three parts water with a forth of wine that's blended in. Set your slaves to winnow Demeter's holy grain, when strong Orion first appears, on a smooth threshing-floor in an airy place. Then measure it and store it in jars. And so soon as you have safely stored all your stuff indoors, I bid you put your bondman out of doors and look out for a servant-girl with no children; -- for a servant with a child to nurse is troublesome. And look after the dog with jagged teeth; do not grudge him his food, or some time the Day-sleeper may take your stuff. Bring in fodder and litter so as to have enough for your oxen and mules. After that, let your men rest their poor knees and unyoke your pair of oxen. But when Orion and Sirius are come into mid-heaven, and rosy-fingered Dawn sees Arcturus, then cut off all the grape-clusters, Perses, and bring them home. Show them to the sun ten days and ten nights: then cover them over for five, and on the sixth day draw off into vessels the gifts of joyful Dionysus. But when the Pleiades and Hyades and strong Orion begin to set, then remember to plough in season: and so the completed year will fitly pass beneath the earth.
...
(765) The days are sent by Zeus, so mark them well, attentively; and tell your slaves the thirtieth is the month's best-suited day to oversee the work and portion out the food supply - when people judge correctly and observe it as it is. The days ordained by Zeus, the ingenious counselor, are these: the first and fourth and seventh days are holy days to men (Apollo of the golden sword was born from Leto then - upon this last), the eighth and ninth as well. Moreover, two days of the waxing month stand out for tasks men have to do, the eleventh and the twelfth - those days are excellent indeed for shearing sheep or gathering up the corn that makes men glad; and yet the twelfth is better than the eleventh, it is said, for on that day the upward-flouting spider spins its thread at noon - the time the Provident piles up its little home: a woman should set to work upon that day and ply her loom.
...
(780) The thirteenth of the waxing month is a day that you should shun for sowing, but for planting vines there is no better one. For planting vines the middle sixth is uncongenial but good for the birth of males - although for females it is not suited, and especially not for taking a marriage vow. While the first sixth isn't suited for the birth of girls (although for gelding kids it's kind, or building pens to enclose the herds), it's fine for the birth of boys - though they will be prone to utter words that mock and lie and wheedle and in secret whispers coax."

Hesiod, passim

When you read that

"If she [the moon] is slender and clear about the third day, she heralds calm: if slender and very ruddy, wind; but if thick and with blunted horns she show but a feeble light on the third and fourth night, her beams are blunted by the South wind or imminent rain. ... If her upper horn nod forward, expect thou the North wind, but if it lean backward, the South",

or

"When the artichoke's in bloom and the cidada in the tree, the musical cidada, spreads continua melody, sweet-toned from beneath its wings in the wearying summer season, then the goats are fattest and the wine is at its best, the women are most wanton and the men are most depressed",

or

"For planting vines the middle sixth [day of the month] is uncongenial but good for the birth of males - although for females it is not suited, and especially not for taking a marriage vow. While the first sixth isn't suited for the birth of girls (although for gelding kids it's kind, or building pens to enclose the herds), it's fine for the birth of boys - though they will be prone to utter words that mock and lie and wheedle and in secret whispers coax",

then you have no doubt: these 'wise men' had no idea of what they were talking about. But so many school teachers still talk about the wisdom of Aratus, of Hesiod!

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5. [ancient Greek TK - myths; card-Lloyd (1979, 1983)]

"This study ... is a contribution to what may be thought to be, by now, a very hoary problem, namely the relationship between what may be called 'traditional' and 'scientific' patterns of thought... It is not hard to suggest reasons for the dominant role of this issue in early anthropological writings, one in the way in which it was often represented as a matter of polar contrast between 'primitive' and 'civilised' societies or between two distinct mentalities, the one 'pre-logical' or 'pre-scientific' and the other 'logical' or 'scientific'. (p.1)

The 'emergence of philosophy and science' is a convenient shorthand term, but a vague one and one that carries the risk of distorting the focus of the problem. ... Popular and traditional beliefs - including superstition and 'magic' - were not superseded: they continued to be held not only (one presumes) by most Greeks but in particular by many highly articulate writers. (p.227)

The investigability of nature was explicitly recognised, ... The society in which these inquiries were first pursued was far from a primitive one. The level of technology and that of economic development were far in advance of those of many modern non-industrialized societies: above all literacy presents a difference not just of degree but of kind." (p.266)

Lloyd (1979)

"A major methodological problem that must be raised straight away will indicate the limitations of our inquiry. The difficulty concerns the extent to which the reconstruction of 'popular' or 'traditional' beliefs or practices is possible. Obviously there is no way in which we can gain direct access to the ideas and assumptions of the vast majority of ordinary men and women in the periods we are interested in (which stretch from the sixth century B.C. to the second century A.D.). (p.2)

The use and properties of plants, real or imagined, were the subject of intense interest from the earliest times. Already in our earliest Greek literary source, Homer, certain plants are marked out for their special qualities and for the special way they need handling. ... Alongside what was commonly known or believed, much esoteric lore grew up ..." (p.119)

LLoyd (1983)

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5. [ancient Greek TK - myths; card-Veyne (1983)]

"**Toute cette** littérature qui s'ignorait [la mythologie grecque] en rappelle une autre: les vies des martyrs ou des saints locaux ... Ces mondes de légende étaient crus vrais, en ce sens qu'on n'en doutait pas, mais on n'y croyait pas comme on croit aux réalités qui nous entourent. Pour le peuple des fidèles, les vies des martyrs remplies de merveilleux se situaient dans un passé sans âge, dont on savait seulement qu'il était antérieur, extérieur et hétérogène au temps actuel; c'était 'le temps des païens'. Il en était de même des mythes grecs; ils se passaient 'avant', durant les générations héroïques, où les dieux se mêlaient encore aux humains. (p.29)

Comme à l'époque archaïque, le passé de l'humanité était donc précédé d'une période merveilleuse qui était un autre monde. Réel en lui même et irréel par rapport au nôtre. ... Dans cette civilisation, on n'apercevait rien au-delà d'un horizon temporel très proche. (p.59)

On se sent plus à l'aise pour étudier les croyances, religieuses ou autres, quand on comprend que la vérité est plurielle et analogique. (p.97)

S'il faut mesurer au nombre de millions de morts, le patriotisme, dont personne ne parle plus, a fait et fera autant de victimes que les idéologies dont on s'indigne exclusivement. (p.135)

A la seule lecture du titre [de ce livre: 'Les Grecs ont-ils cru à leurs mythes?'], quiconque a la moindre culture historique aura répondu d'avance: 'Mais bien sûr qu'ils y croyaient, à leurs mythes!'. Nous avons simplement voulu faire en sorte que ce qui était évident à 'ils' le soit aussi de nous et dégager les implications de cette vérité première. (p.138)"

Veyne (1983), passim

We recommend warmly these 3 books (they are very probably not to be found in the Maze, but any good university library will do), as an effective antidote to the mythology about the myths of ancient Greece and their wisdom. Even if we know that (slavery apart, and paedophilia apart - mostly with slave children - but we never talk about it!) our so-called 'civilisation' and our 'science' own quite a lot to these 'mythes fondateurs'.

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5. [ancient Icelandic TK - myths; card-Boyer (2012)]

"Alors, il [Heidrekr] lui [à Sifka] dit: 'Le fils du roi [de Gardaríki] et moi, nous nous trouvions tous les deux près d'un pommier. Alors, mon fils adoptif me demanda de lui donner une pomme qui était très haut dans l'arbre. Ensuite, je brandis Tyrfringr [une épée magique] et abattis la pomme et cela fut fait avant que je réfléchisse à la malédiction qui pèse sur elle: il faut que meure un homme si elle est brandie, et nous étions seuls tous les deux. Alors, j'ai tué le garçon. (p.142)

Saga de Hervör et du roi Heidrekr, 9

'Je [Oddr] veux que tu [Heidr, prophétesse] te taises au plus vite et ne bavasse pas sur mon avenir parce que je ne crois pas à ce que tu prédis'.

Elle dit: 'Je vais pourtant te le dire, et tu vas écouter', dit-elle. Et alors, ce poème lui vint à la bouche:

'Mieux ferais-tu, Oddr de Jadarr,
de ne pas m'agacer
de ton bout de bois
même si je divague:
l'histoire s'avérera
que dit la prophétesse.
D'avance elle sait les destins
de tous les hommes.

Que tu ailles par
les vastes fijords ou que tu arpentes
terres et vagues,
que l'écume de la mer
sur toi dérive -
c'est ici que tu brûleras,
à Berujord.

Le serpent te malmènera
de son venin mêlé,
étincelant depuis l'antique
crâne de Faxi:
le serpent te frappera
à la semelle de ton pied,
tu auras alors
accompli ton temps.

...

Il y a ici un cheval dans l'écurie, sa crinière est de couleur différente de son corps et il est de couleur grise. C'est le crâne de ce Faxi-là qui sera ta mort.'

'Sois la plus misérable des vieilles pour cette prophétie sur mon compte', dit Oddr." (p.834)

[Oddr mourra, comme prophétisé, au ch.31]

Saga d'Oddr aux flèches, 2

Boyer (2012)

If we come nearer (in time), our Western TK gives us some very beautiful 'pieces of lore'; the wanton cruelty of the Northern Middle Age 'sagas' is appalling. Violence, robbery, arson of homes with their inhabitants inside, ... : all this is 'sang' as heroic feats of valiant young men. The killing of the boy, in the card above on Icelandic sagas, is typical of the cold, almost indifferent way, in which murder was represented. But this also we have inherited, as part of what should be called our EKS: European Knowledge System(s).

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5. [European folklore and sagas; card-Kreutzwald (1982)]

- "… she hardened her sons into heroes, clicked sense into their heads…" (The second tale, p.23)

Reference is made to the folk belief in 'clicking', whereby the faculties of a newborn infant are believed to be enhanced by a certain clicking sound made by the attending midwife. (p.270)

- "… while with child, tread heavily, changing shoes each morning so that the Fiend wont's find the way." (The second tale, p.25)

Expectant mothers traditionally changed shoes daily in order to confound those spirits of sickness that paied special heed to pregnant women. (p.271)

- "His wife set her brooch a-swinging and a ladybug a-flying." (The second tale, p.26)

A brooch suspended from a string was believed to reveal desired directions and to be able to answer certain questions. (p.271)

- "The fine island girl heard the stranger's tale with fright, she paled to the hue of death when he named as his sire Kalev and Linda as his mother. The frightened little creature, the fine island girl, ... fell headlong into the wet, dropped into the deep waves, down to the sea's steep bottom." (The forth tale, p.53)

The reason for the island maiden's dejection and suicide was the realization that Kalevipoeg, the man who had seduced her, was in fact her brother. (p.271)

- "And every day, while skilfully forging the blade, the smith chanted seven sorts of spells: proper words for power, weighty words for the vigour of the famed king of swords." (The sixth tale, p.74)

- "Hi set a brooch to swaying, placed a magic charm to swivel, made a ravenstone spin." (The twelfth tale, p.150)

A 'ravenstone' (kaarnakivi) is a stone allegedly borne by a raven from a far country if one of the eggs over which it is brooding fails to hatch. This 'stone of life' is said to have magical and medicinal properties. (p.273)

- "… so that, through the race of ants, they would send a sign as to where the living quarters and the stalls and stables should most fittingly be stood, built most auspiciously." (The fifteenth tale, p.195)

Grass or rags or 'wood chips' were placed at the building site; if red ants subsequently appeared in the grass, rags, or chips, the site was considered inauspicious for construction. If, however, black ants were seen, the site was acceptable. (p.274)

Kalevipoeg, in Kreutzwald (1982)

The Estonian Middle Age saga from which the card above was compiled is perhaps a bit less cruel, but leaves us with a depressing feeling on how deeply our ancestors, imbedded in their EKS, were dependent on 'signs', 'rituals' and 'premonitions'. We read this prose or these old poems as 'literature', but we are not always aware of how much that EKS of yore was similar to the IKS of today. People then were slaves, more than dependent, and terrorised by their EKS; people now, in the UDCountries, are slaves, more than dependent, and terrorised by their IKS. And the GRTKF (or even more the GRTKF+CE future program) wants, not to help lifting people off their IKS, but crystallising them into an IKS with IPRs and 'sui generis' Intellectual Property seals!

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5. [European folklore and sagas; card-sampo (2013)]

"In Finnish mythology, the **Sampo** or **Sammas** was a magical artifact of indeterminate type constructed by Ilmarinen that brought good fortune to its holder. When the Sampo was stolen, it is said that Ilmarinen's homeland fell upon hard times and sent an expedition to retrieve it, but in the ensuing battle it was smashed and lost at sea.

The Sampo has been interpreted in many ways: a world pillar or world tree, a compass or astrolabe, a chest containing a treasure, a Byzantine coin die, a decorated Vendel period shield, a Christian relic, etc. In the Kalevala, compiler Lönnrot interpreted it to be a quern or mill of some sort that made flour, salt, and gold out of thin air. The world pillar hypothesis, originally developed by historian of religions Uno Harva and the linguist Eemil Nestor Setälä in the early 20th century, is the most widely accepted one. According to Giorgio de Santillana, professor of the history of science at MIT, and student of mythology, the sampo and the world pillar both refer to the precession of the equinox. In Hamlet's Mill, co-authored with Hertha von Deschend, the authors find that the sampo or precession process was believed to grind out different world ages, from dark age to golden age and back again over the long precession cycle. The sampo is a pivotal element of the plot of the Finnish epic poem Kalevala, compiled in 1835 (and expanded in 1849) y Elias Lönnrot based on earlier Finnish oral tradition.

In the expanded second version of the poem, the Sampo is forged by Ilmarinen, a legendary smith, as a task set by the Mistress of Pohjola in return for her daughter's hand. ... Ilmarinen works for several days at a mighty forge until finally the Sampo is created. ...

Later, Louhi the sorceress steals the Sampo, provoking Ilmarinen and Väinämöinen to enter her stronghold in secret and retrieve it. Louhi, in reply, pursues them and combats Väinämöinen. In the struggle, Louhi is vanquished but the Sampo is destroyed.

The Cornucopia of Greek mythology also produces endless goods. Some versions of the Grail myth emphasize how the Grail creates food and goods. The Mill Grótti of the Grottasöngr in Nordic mythology also produces gold (as well as peace and happiness) and salt. Japanese folktale Shiofuki usu speaks of a grindstone that could be used to create anything. Like Sampo, it too was lost to the sea, endlessly grinding salt.

The Mahabharatha speaks about the Akshaya Pathram, a vessel/bowl capable of creating food. It stopped providing at the end of the day when the lady of the house had her last meal. This vessel was provided to the Pandavas, when in exile, by Krishna. The World Mill is a hypothesized mytheme shared by the mythologies of certain Indo-European-speaking peoples, involving the analogy of the cosmos or the firmament (Finnish: Taivaankansi) and a rotating millstone. The aforementioned Grótti is sometimes seen as an example of the myth."

sampo (2013), passim

This 'sampo' story can just make us laugh, but we put it here as it will find, in what follows and while discussing the 'invented traditions' (Chapter 7), an amusing parallel with the Indian 'soma'. In both cases, an enormous symbolic and emotional weight has been charged on these two words, or better, on the objects that these two words were supposed to refer to. But no one knows in Finland today what objet a 'sampo' was or was intended to be; no one knows in India today what plant the 'soma' was when it was an essential ingredient of Veda rituals.

- 5. [European 'secrets' and patents on 'knowledge'; card-Eamon (1994)]

"The corporate structure of the medieval craft economy also influenced attitudes toward public disclosure of technical secrets. Technical knowledge was the craftsman's most valuable property, even more valuable than his material or his labor. Economic realities compelled craftsmen to keep the secrets of the arts guarded from public view. In specialized... and highly skilled crafts like dyeing and glassmaking, success depended upon precise and detailed knowledge of the kind and quality of materials for a process, the manner and proportions of combining them, and the often subtle effects of temperature on the material. Such 'trade secrets' were valuable intellectual property. ... Guild ordinances often enforced restrictions against openness - for instance, by forbidding artisans to teach the craft to anyone but sworn apprentices. (p.81)

The Nuremberg smith [from a 1389 Nuremberg manuscript on iron and steel hardening] listed more than a dozen recipes for such compound quenching baths. Scytes, for example, were best hardened in suet, while files should be quenched in a mixture of linseed oil and goat's blood. ... By what criteria were such ingredients selected? Practical experience was certainly the most common guide, and probably the most reliable. But it appears that simple trial and error was supplemented by folklore and by analogical reasoning about the properties of materials. It has been suggested that the idea of adding plant and animal materials to quenching baths was based upon an analogy with medicine, the idea being to 'treat' deficiencies in metals. (p.86)

The first patent law was enacted in 1474 in Venice. The law justified the protection of intellectual property on strictly economic grounds: 'If provision were made for the works and devices discovered by such persons, so that others who may see them could not build on them and take the inventor's honor away, more men would apply their genius, would discover, and would build devices of great utility and benefit to our commonwealth.' (p.89)

But how is experience to weave its way through this labyrinthine network of correspondences and hidden similitudes? How are nature's 'secrets' to be discovered? The answer is that nature puts a mark on things: the outward appearances of things provide clues or signs pointing to the properties that would otherwise be totally hidden from view. These 'signatures', or visual likenesses, enable us to know, for instance, that the herb 'scorpius', which resembles the scorpion, is a good remedy against the scorpion's sting; that the milky galactites, powdered and sprinkled over the back of a goat, will cause the goat to give milk plentifully to her young; or that the wine-colored amethyst prevents drunkenness. ... Without signatures, nature would be baffling and impenetrable. (p.214)

The problem of what qualifies as knowledge is intimately connected with the problem of who owns it. That is why the metaphor of the 'secrets of nature' has been one of the most prominent and most powerful metaphors in the history of science. To the extent that science attempts to go beyond the obvious or the 'naively' empirical and to discover a deeper reality than that revealed to the senses, one might say that finding out the 'secrets of nature' is the goal of all scientific inquiry." (p.351)

Eamon (1994), passim

This card, from a very interesting book by Eamon, show you how, even after Mittle Age and the age of sagas in Europe had been passed beyond, the prevailing EKS(s) in Europe were still dominated by a “labyrinthine network of correspondence and hidden similitudes”. How could Renaissance blossom out of this dense web of obscure constrains? And how people felt about 'knowledge'?

- 5. [ancient European approach to 'knowledge'; card-Bloch (1939)]

"Aux yeux de toutes les personnes capables de réflexion, le monde sensible n'était guère plus qu'une sorte de masque, derrière lequel se passaient toutes les choses vraiment importantes, un langage aussi, chargé d'exprimer, par signes, une réalité plus profonde. Comme un tissu d'apparence n'offre que peu d'intérêt, en soi, il résultait de ce parti pris que l'observation était généralement délaissée au profit de l'interprétation. Dans un petit *Traité de l'Univers* qui, écrit au IXe siècle, jouit d'une vogue très longue, Raban Maur expliquait comme il suit son dessein: "il m'est venu à l'esprit de composer un opuscule... qui traitât, non seulement de la nature des choses et de la propriété des mots.... mais encore de leur signification mystique". Par là s'explique, pour une grande part, la médiocre prise de la science sur une nature qui, au fond, ne semblait pas mériter beaucoup qu'on s'occupât d'elle. La technique, jusque dans ses progrès parfois considérables, n'était qu'empirisme.
Au surplus, cette nature décriée, comment eût-elle paru apte à tirer d'elle-même sa propre interprétation? N'était-elle pas, dans l'infini détail de son déroulement illusoire, conçue avant tout comme l'œuvre de volontés cachées? De volontés, au pluriel, du moins à en croire les simples et même beaucoup de doctes. Car, au-dessous du Dieu Unique et subordonnés à sa Toute-Puissance — sans que d'ailleurs on se représentât, à l'ordinaire, bien clairement l'exacte portée de cette sujétion —, le commun des hommes imaginait, en état de perpétuelle querelle, les vouloirs opposés d'une foule d'êtres bons ou mauvais. saints, anges, diables surtout. "Qui ne sait", écrivait le prêtre Helmold, "que les guerres, les ouragans, les pestes, tous les maux, en vérité qui s'abattent sur le genre humain, arrivent par le ministère des démons?". Les guerres, on le notera, sont citées pêle-mêle avec les tempêtes; les accidents sociaux, donc, sur le même plan que ceux auxquels nous donnerions aujourd'hui le nom de naturels."
Bloch (1939), p.88 ss

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5. [considerations on WIPO GRTKF projet; card-Correa (2001) policy issues]

"This paper discusses a number of policy issues surrounding the protection of TK that may be relevant to future negotiations or a deeper treatment of this issue in various international fora. The paper aims to:

• highlight, clearly and concisely, various perspectives on the policy issues raised for developing countries and traditional and indigenous communities within them by the expansion of intellectual property rights (IPRs),
• outline some definitional problems and the rationale and objectives for protection, different strategies for the use of IPRs for such protection, and various modalities of a *sui generis* regime as well as alternatives to these,
• examine the possible functions of a regime on TK, its impact on the intended beneficiaries and key ethical, economic, environmental and social concerns,
• consider the possible contribution of overseas development assistance (ODA) in developing and implementing policies on the protection of TK. (p.2)

Despite the growing recognition of TK as a valuable source of knowledge, it has generally been regarded under Western intellectual property laws as information in the 'public domain', freely available for use by anybody. ... TMK serves the health needs of a vast majority of people in developing countries, where access to 'modern' health care services and medicine is limited by economic and cultural reasons. (p.3) ...

The difficulty in defining TK should not be an obstacle to elaborating the conditions for the protection of such knowledge ... For instance, 'mola' is a traditional handmade textile work manufactured by cutting and stitching several layers of cloth to form a multi-colored product. The 'molas' have been traditionally produced by the native Kuna communities in Panama. ... TK may be possessed by individuals (e.g. healing practices and rituals, by some members of a group ('common knowledge'), for example with knowledge on herbal-home remedies which is held by millions of women and elders. (p.4) ...

Some understand this concept [protection] in the context of IPRs, where protection essentially means to exclude the unauthorised use by third parties. Others regard protection as a tool to preserve TK from uses that may erode it or negatively affect the life or culture of the communities that have developed and applied it]. (p.5) ...

IPRs are seen as one possible means to 'protect' TK. ... Those who are reluctant or opposed to the idea of applying existing IPRs or creating a new form of IPRs to protect TK base their arguments on both practical reasons and principles, namely the essential incompatibility between the concepts of Western IPRs and the practices and cultures of local and indigenous communities. For some opponents, bringing communities and their resources into the fold of the market economy could overwhelm and ultimately destroy those societies." (p.9)

Correa (2001)
www.tansey.org.uk/docs/tk-colourfinal.pdf

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5. [critical approaches to the WIPO GRTKF project; card-Pimentel (2003)]

"[A professora portuguesa Manuela Carneiro da Cunha ... participou do movimento de criação das ONGs que ajudaram a garantir os direitos indígenas na Constituição de 1988. Também organizou estudos de fôlego, como a monumental coletânea História dos Índios no Brasil (1992) e, mais recentemente, a Enciclopédia da Floresta (2001), reunião de estudos feitos na região da bacia do Alto Juruá (AC)]
Agência Brasil: A senhora falava em sua exposição da idéia de direitos intelectuais sobre o conhecimento tradicional, distinguindo-os da idéia de propriedade intelectual. Que categorias a senhora acredita que poderiam ser mais adequadas para garantir os direitos sobre o conhecimento tradicional, que não a idéia de propriedade?

Manuela Carneiro da Cunha: A contracultura hoje é a da liberdade de apropriação, transformação, recriação de idéias alheias – como sempre foi, aliás. E essa contracultura se opõe a uma tendência hegemônica, sobretudo em lugares como os Estados Unidos, em que, ao contrário, a apropriação privada das criações, sejam elas artísticas ou científicas, está imperando. Se você impõe a figura da propriedade intelectual, congela e monopoliza a informação de uma forma que não é necessariamente compatível com o modo de produção do conhecimento pelas sociedades tradicionais, em que a informação circula muito livremente. No fundo, essas sociedades são um pouco como uma universidade, uma ilha de discussão de idéias livre num mar de apropriação privada de idéias.
O modo de conhecimento das sociedades tradicionais repousa em grande parte sobre uma livre circulação de informações e de resultados de experiências. Torná-lo propriedade é engessar esse modo de conhecimento e pode destruir aquilo que se está querendo proteger. O domínio público pago poderia ser uma via alternativa interessante a essa idéia de propriedade. É pago se for usado comercialmente, para os provedores do conhecimento participarem dos resultados. Caso não seja usado comercialmente, continua em domínio público. Isso teria algumas vantagens também porque muito do conhecimento tradicional já existente está em domínio público de fato: em bancos de dados, em publicações, inclusive antropológicas, etnográficas. ...
Todos nós, inclusive as populações tradicionais, usamos os conhecimentos um dos outros. Há uma grande mistura. O café veio para cá, e a borracha foi para a Malásia. O século XVII foi o grande século do trânsito botânico, e os portugueses e holandeses foram os principais artífices disso. Promoveram uma enorme viagem de espécies botânicas pelo mundo. Seria absurdo pagarmos pelo uso do café, ou pensar que deveríamos ter participação nos benefícios pelo uso da borracha na Ásia. Não se trata disso, há uma questão de bom senso aí.
O que há é a idéia de que o conhecimento atual, que vai servir para se desenvolverem novos produtos, deveria também beneficiar quem gerou essas idéias. É muito diferente da propriedade intelectual em sua plenitude. Da mesma maneira que, por exemplo, existem movimentos como o do copyleft, na área da Internet ... , há muita convergência com essas idéias de um regime sui generis que, por um lado, beneficie os produtores desses conhecimentos, mas por outro lado não os sequëstre."

Pimentel (2003), passim

We leave not our faithful reader/fellow-traveller to a careful reading of these last 3 cards that refer to some of the very rare critical analyses of the whole GRTKF program. These cards offer different perspectives, represent slightly different approaches to GRTKF, or at least offer a welcome opening towards a critical appraisal of the program.

We are now better prepared to enter the most interesting space of the Maze, where TK is confronted with the new, quite modern challenges of biodiversity and protection of Genetic Resources (GR), and is perhaps unduly enlarged to embed Folklore (F) and/or Cultural Expressions (CE), and Rituals.

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add Intr.5 Bloch (1939) + a chart?
Duterme (2014)
Jefferson (2014)
Kagonge (2014)
Kasali et al (2014)
Krikorian (2014)
Lantenois et al (2014)
Saez (2014c)
Saez (2014d)
Saez (2014e)
WIPO (2012f)
WIPO (2014)
WIPO (2014a)
WIPO-Consolidaded-2-6-'14
WIPO-Decisions-ic-28

Section 5.a - TK embeds GR

When looking for items about Genetic Resources in the Maze (to understand, in particular, how it happened that GR was scotched to TK by WIPO), the first solid column you will find is the 'Convention on biological diversity' (CBD, 1992). With rather adroit skilfulness, the text says everything and the contrary, and leaves ample room for the necessary 'interpretations': nutritious food for the International Organisations' men of law.

An introduction:

"Le Sommet de la Terre (Rio de Janeiro, 1992) marque le début des négociations internationales sur les problèmes d'environnement global. La Convention sur la diversité biologique (CDB), signée à cette occasion, affiche, dans son article premier, trois objectifs consensuels: 'La conservation de la diversité biologique, l'utilisation durable de ses éléments et le partage juste et équitable des avantages découlant de l'exploitation des ressources génétiques... '. Les deux premiers objectifs s'inscrivent dans la suite logique des travaux menés depuis plusieurs décennies par les milieux conservationnistes. Le monde de la conservation a intégré dans ses principes d'action le développement durable, popularisé par le rapport Brundtland quelques années auparavant. La gestion des ressources doit reposer sur une vision globale et à long terme de la nature et le terme d'usage durable consacre les activités humaines comme moyens de conservation. Le troisième objectif, qui évoque des échanges de ressources génétiques, semble en décalage avec les deux premiers. Il se réfère à l'immédiat, ne considère que le niveau génétique de la biodiversité et préfigure des transferts économiques de ressources garants du développement et de l'équité entre le Nord et le Sud. Comment est-on arrivé à cette combinaison d'objectifs? Quelles en sont les implications politiques? Les années 1980 ont été marquées par le développement des biotechnologies et l'expansion des droits de propriété intellectuelle sur le vivant. Dans le même temps, les pays du Sud se présentaient comme les principaux détenteurs des ressources biologiques. L'accès aux ressources génétiques devenait alors une priorité pour les pays industrialisés."
Pinton et al (2007), p.165.

From Pintor et al (2007), you could infer that the issue is almost obvious, that of course everybody has to easily agree ... However, the dynamics of the entrance of GR into the (already complex) paysage of the WIPO subspace of the Maze concerning the *'sui generis'* IPRs WIPO program is far from being smooth, as the following two 2014 quotations from Ip-health bear witness:

"WIPO: Negotiations on IP and Genetic Resources to resume amidst major differences (3 February, 2014)

Geneva, (K M Gopakumar) – Member States are to resume negotiations on an international legal instrument on intellectual property and genetic resources at the World Intellectual Property Organization (WIPO). This will take place at the 26th Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore on 3-7 February 2014 in Geneva.

The WIPO General Assembly in 2009 provided the mandate for text-based negotiations to conclude an international legal instrument. The mandate of the IGC is to expedite its work with open full engagement of Member States, on text based negotiation with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions (TCE). ... The consolidated text (comprising proposed text from Member States) on IP and GR proposes a mandatory international disclosure regime to prevent biopiracy i.e. in this context, misappropriation of genetic resources and associated traditional knowledge through IP protection. This instrument also proposes prohibition of patenting or any other IP protection for genetic resources or their derivatives found in nature."
Gopakumar (2014)

and

"WIPO: North-South differences on genetic resources instrument
Geneva (4 February, 2014)

Geneva, (Alexandra Bhattacharya) - The 26th session of the WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC) commenced on Monday, 3 February where the focus of discussion was on Genetic Resources. The meeting at the WIPO headquarters in Geneva will be on 3-7 February.
The WIPO General Assembly in 2009 provided the mandate for text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of genetic resources (GR), traditional knowledge (TK) and traditional cultural expressions (TCE). This mandate was renewed twice in 2012 and 2013.
The first half of 3 February was devoted to a meeting of ambassadors and senior capital-based officials for 'an interactive, open and frank exchange'. This was pursuant to paragraph (b) of the IGC's mandate for the 2014/2015 biennium, with the purpose 'to share views on key policy issues relating to the negotiations and to further inform/guide the process'. ...
In the afternoon, Ambassador Wayne McCook (Jamaica) provided an overview of the high level segment held in the morning. (The verbatim report of the meeting will be included in the session's report). The following questions were posed to the meeting:
"1. In respect of GR, TK and TCE
a. What is the policy issue that needs to be resolved as a priority and why?
b. What should be dealt with an International legal instrument and what could be left to deal with at the national level?
c. What suggestions are there for common ground on the issues that need to be resolved internationally?
2. Regarding the process as a whole, what new negotiating pathways and modalities might there be to make further progress?"
According to Ambassador McCook, some of the key views included:

- The general view among all participants was that the misappropriation of GR, TK and TCEs legitimately held by owners was not acceptable. There clearly needs to be a discussion on "legitimate holding". No one expressed the view that misappropriation of these materials was acceptable.
- Delegations also expressed in numbers the view that the instrument being developed should be aimed at assisting in preventing the granting of erroneous or poor quality patents. The clearest references were made to the patent systems.

- Regarding ways that these concerns may be addressed, some delegations expressed the view that Databases would allow a means of checking if material should be denied treatment or patentability.
- Some expressed support for the disclosure approach: There was difference in view whether it should be mandatory and the conditions which should imposed. One way forward proposed was the experience of disclosure regimes in practice."

Bhattacharya (2014)

We try now to separate two rather different, if interweaved, issues:

- first: GR and TK?

Let us explore the offered formulation of the presumed relationship between TK and GR in CBD (1992):

"Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices. (art.8,j)

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements." (art.10,c)
CBD (1992)

You are told that:

- you have to 'respect, preserve and maintain knowledge, ... '; but 'subject to [every State] national legislation'

- you have to 'respect, preserve and maintain knowledge, ... '; but only as far as they are 'relevant for the conservation and sustainable use of biological diversity'

- you have to promote the 'wider application of this knowledge, ... '; but only 'with the approval and involvement of the holders of such a knowledge'

- you have to 'protect and encourage customary use of biological resources'; but only 'in accordance with cultural practices'

- but beware: in accordance only with those 'traditional cultural practices' that are 'compatible with conservation or sustainable use requirements'

This last point is precious: notwithstanding the well familiar 'mantra' (in the Maze) according to which TK is (by nature, by long experience, by careful choice?) always compatible with ecological needs, a doubt was lingering there: could it ever be that TK and ecology were, sometimes, not compatible?

In CBD (1992), the fact that the identification of the IKS with some sort of ecological 'ancestral' consciousness is not taken for granted. Is seems that, in 1992, we were still prepared to find that, for instance, some TK could not be necessarily 'relevant for the conservation and sustainable use of biological diversity'; or that some 'customary use of biological resources' could not be 'compatible with conservation or sustainable use requirements'.

A problem that E.Desmet clearly indentified in the Peruvian legislation:

"Provisions on the recognition or application of customary law are therefore often mitigated by qualifiers that pave the way for arbitrary interpretations. Customary law or traditional decision-making mechanisms are, for instance, only applied 'where appropriate'. No real and effective space is given to the application of rules other than those originating in the state legal system". Desmet (2011), p.24

Later on, it seems, the identity of the everyday practices associated with the local IKS with the 'safe' practices suggested by a sustainable, ecological use of the environment was taken for granted, and became an impenetrable 'mantra'. Henceforth, indigenous people were assumed - by 'fiat' - to be careful custodians of biodiversity. No one had really asked them for this tacit, but heavy, engagement.

We can add here the voice, not truly disenterested when 'profit' comes into play, of the IFPMA [International Federation Pharmaceutical Manufacturers & Switzerland Associations, Geneva], on how Big Pharma would be happy to collaborate with 'the sustainable use of genetic resources (GR) and, once clearly defined, associated traditional knowledge (TK)':

"Guidelines1 for IFPMA Members on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization

IFPMA members:
Supporting the objectives of the Convention on Biological Diversity (CBD) and recognizing thenational sovereignty of States over biological resources,
Supporting and wishing to participate in the development of a regime on Access and Benefit Sharing (ABS), which would facilitate the sustainable use of genetic resources (GR) and, once clearly defined, associated traditional knowledge (TK) and regulate the rights and responsibilities of users and providers of such resources in a transparent way, taking into account related discussions and outcomes from other relevant international fora,
Aware of the important role the research-based pharmaceutical industry has to play as a stakeholder in informing policy decision-making related to this issue through its unique expertise and practical experience in managing the complex nature of the medical innovation process,
Willing to participate in appropriate technical assistance, in coordination with the CBD Secretariat and CBD parties/observers or other appropriate organizations, to build the legislative, science and negotiating capacity of CBD parties,
Calling on CBD members to ensure continuing education and outreach efforts to facilitate capacity building, either independently or through a body such as WIPO, relating to the development of model and/or national legislation governing prior consent and benefit sharing laws, including model clauses for ABS agreements, keeping in mind that such laws should

achieve a satisfactory balance between the conservation of biodiversity and encouragement of access to and use of GR in a way that would promote fair and equitable benefit sharing,
Propose concrete measures to facilitate implementation of CBD provisions relating to access to genetic resources and equitable sharing of the benefits arising out of their utilization and related traditional knowledge."
IFPMA (w.d.)

The two next cards will help us to set the basis terms and dig more deeply into CBD (1992):

5.a [TK and biological diversity; card-CBD (1992) preamble]

"CONVENTION ON BIOLOGICAL DIVERSITY

Preamble: The Contracting Parties,

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere,

Affirming that the conservation of biological diversity is a common concern of humankind,

Reaffirming that States have sovereign rights over their own biological resources,

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner,

Concerned that biological diversity is being significantly reduced by certain human activities,

Aware of the general lack of information and knowledge regarding biological diversity ... ,

Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source,

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat,

Noting further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings,

Noting further that *ex-si tu* measures, preferably in the country of origin, also have an important role to play,

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits ...,

Have agreed as follows: "

CBD (1992), passim
www.cbd.int/doc/legal/cbd-en.pdf

5.a [TK and biological diversity; card-CBD (1992) *use of terms*]

"For the purposes of this Convention: Use of terms

'Biological diversity' means the variability among living organisms from all sources including, *inter alia,* terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.

'Biological resources' includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

'Biotechnology' means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

'Country of origin of genetic resources' means the country which possesses those genetic resources in *in-situ* conditions. ...

'Domesticated or cultivated species' means species in which the evolutionary process has been influenced by humans to meet their needs. ...

'Ex-situ conservation' means the conservation of components of biological diversity outside their natural habitats.

'Genetic material' means any material of plant, animal, microbial or other origin containing functional units of heredity.

'Genetic resources' means genetic material of actual or potential value.
'Habitat' means the place or type of site where an organism or population naturally occurs.

'In-situ conditions' means conditions where genetic resources exist within ecosystems and natural habitats, and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

'In-situ conservation' means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

'Protected area' means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives. ...

'Sustainable use' means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations

'Technology' includes biotechnology."

CBD (1992), passim
www.cbd.int/doc/legal/cbd-en.pdf

Next card on FAO policy will illustrate how, at least for a while, the need for 'the creation of an effective multilateral system for facilitated access to a negotiated selection of these [genetic] resources and for the fair and equitable sharing of the benefits arising from their use' and the invitation 'to provide and/or facilitate access to such technologies and genetic material which is under the Multilateral System and to improved varieties and genetic material developed through the use of plant genetic resources for food and agriculture' was not felt as being contradictory with the need for such access and transfer 'to be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights'.

In 2004, it seems, no deep discussion was already open on the insufficiency of 'Western' IPRs to deal with indigenous TK on genetic resources.

5.a [TK, GR, and agriculture; card-FAO (2004)]

"Recognizing that, in the exercise of their sovereign rights over their plant genetic resources for food and agriculture, states may mutually benefit from the creation of an effective multilateral system for facilitated access to a negotiated selection of these resources and for the fair and equitable sharing of the benefits arising from their use. (p.8)

Recognizing that, in the exercise of their sovereign rights over their plant genetic resources for food and agriculture, states may mutually benefit from the creation of an effective multilateral system for facilitated access to a negotiated selection of these resources and for the fair and equitable sharing of the benefits arising from their use. (p.10)

'Plant genetic resources for food and agriculture' means any genetic material of plant origin of actual or potential value for food and agriculture. 'Genetic material' means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity. (p.11)

9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

Access to and transfer of technology

i)...Recognizing that some technologies can only be transferred through genetic material, the Contracting Parties shall provide and/or facilitate access to such technologies and genetic material which is under the Multilateral System and to improved varieties and genetic material developed through the use of plant genetic resources for food and agriculture under the Multilateral System, in conformity with the provisions of Article 12. ...

ii) Access to and transfer of technology to countries, especially to developing countries and countries with economies in transition, shall be carried out through a set of measures, such as the establishment and maintenance of, and participation in, crop-based thematic groups on utilization of plant genetic resources for food and agriculture, ...

iii) Access to and transfer of technology as referred to in (i) and (ii) above, including that protected by intellectual property rights, to developing countries that are Contracting Parties, in particular least developed countries, and countries with economies in transition, shall be provided and/or facilitated under fair and most favourable terms, in particular in the case of technologies for use in conservation, ... Such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. (p.20)

FAO (2004)

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while next card, on the role of the agricultural TK of Peruvian women, will illustrate the way in which the presence of some sort of local GR (six Amazonian plants and trees), associated with the TK of the local indigenous working women in their interacrion with them, leads to the demand of 'rights on them' and 'fair sharing' of profits:

5.a [TK, GR, and agriculture; card-mujeres indígenas (2013)]

"Artesanas yanesha registran técnicas tradicionales del teñido ante Indecopi.

Indecopi, organismo encargado de velar por la propiedad intelectual en el Perú, reconoció a la comunidad indígena de Tsachopen el derecho sobre seis plantas y árboles amazónicos utilizados desde hace cientos de años por el pueblo Yanesha.

Para Erna Gómez, sub jefa de esta comunidad, el registro de estos conocimientos es un gran paso asegurar su protección. 'Siempre vienen a nuestras comunidades a sacarnos información de cómo hacemos una u otra cosa, de cómo nos curamos. Nos utilizan y luego no siquiera nos nombran en sus estudios', refirió. A través de este registro, cualquier ente o empresa que quiera apropiarse de las técnicas empleadas por los pueblos indígenas en el uso de dichas plantas, deberá solicitar su permiso y compensarlos de forma justa.

Los conocimientos colectivos sobre la almendra, el árbol estrella, el tornillo, el palo tintura, el matico y el payón fueron inscritos el pasado octubre por el pueblo Yanesha el registro confidencial del Indecopi. La corteza del payón es utilizada por las mujeres indígenas yanesha para teñir el algodón con el que elaboran las cushmas, prenda de vestir tradicional utilizada por dicho pueblo. Del payón se obtiene el color marrón característico de esta túnica.

Al igual Ortiz, las mujeres de esta y otras comunidades conducen una iniciativa para la recuperación de la biodiversidad amazónica a través del arte con el apoyo de CHIRAPAQ, Centro de Culturas Indígenas del Perú. En 2007, esta asociación promovió el proceso de registro ante el Indecopi de más de ciento cincuenta conocimientos colectivos sobre los recursos biológicos de los pueblos Yanesha de la Selva Central y Quechua de Ayacucho. Hoy, otros cien conocimientos están a la espera de ser registrados en este régimen de protección. La recuperación de estos saberes contó además con el soporte del Instituto de Investigación de la Amazonía Peruana – IIAP.

La ley N° 27811 establece el reconocimiento, por parte del Estado Peruano, del derecho y facultad de los pueblos indígenas de decidir sobre sus conocimientos ancestrales con respecto a sus recursos naturales; también llamados conocimientos colectivos. Asimismo, esta ley garantiza que el uso de los conocimientos colectivos de los pueblos indígenas, por parte de empresas o instituciones externas, se realice con el consentimiento libre previo e informado de los mismos. Igualmente, evita que se concedan patentes a invenciones desarrolladas a partir de estos conocimientos."

mujeres indígenas (2013)

- second: bio-piracy

While it was somehow doubtful, or at least obscure, the relationship between GR and TK, it is on the contrary clear that the phenomenon of 'bio-piracy' depends on TK: to define something as 'pirated' you need someone to claim previous ownership. For a general introduction to the theme, see next card:

5.a. [TK, GR, and IPRs; card-Krattiger (2007)]

"Scientists and anyone else accessing biodiversity must ask, and answer, the following questions prior to initiating collecting activities: Under which conditions may I enter another sovereign state's territory in my scientific capacity? Under which conditions may I collect biological material and related information? Under which conditions may I carry out or export biological material and related information from that sovereign state's territory? Under which conditions may I make further use of collected biological material and related information? ... Humankind has always been — and will always be — completely dependent on the Earth, therefore our treatment of it is paramount to our survival. ... Suddenly, the impact of these environmental changes on human activities (such as agriculture, increasing populations, industrialization, and rising rates of consumption and standards of living) has became clear. The root of biodiversity loss and environmental degradation is the notion that biodiversity is the 'common heritage of mankind' (sic) and must be preserved for future generations. This means that, while the environment belongs to no one, it is entirely our collective responsibility. Beginning some 50 years ago, biodiversity losses began to increase at an alarming pace. Desertification became a recognized problem in many regions of the world with ensuing biodiversity loss. By the late 1970s, biodiversity loss, desertification, and even climate change, had begun to receive significant international attention as more and more people began to recognize that the Earth's resources were finite and that our activities were unsustainable. Due to an accelerating depletion of resources, these resources began to have increasing economic value. Deep concern over an environmental crisis was widely expressed for the first time in an international forum at the United Nations Conference on Environment and Development, commonly known as the Earth Summit, held in Rio de Janeiro, Brazil, in 1992. Concurrent to these activities, biotechnology emerged and with it came the promise of creating life-saving new drugs from genetic resources. ... At the confluence of these world events new concerns emerged over ownership, over the contributions of generations past, and over traditional knowledge (TK) held by indigenous populations. In short, equity concerns arose. ... However, equity is in the eye of the beholder; different individuals come to different conclusions about what is equitable and about how to achieve equity. ... Furthermore, with regard to indigenous knowledge, because its products are intangible, once the knowledge or information is disseminated, control over the knowledge is lost. From an objective standpoint, that knowledge has no direct monetary value unless the knowledge can be translated into a market-based commodity (or service), whereby the value of different contributions (knowledge, technology, labor, capital, and so forth) can be quantified and traded.

In addition to these problems, the western system of IP (intellectual property) rights, particularly patenting, is based on the premise that anything that is already known cannot be protected. Indigenous knowledge is often communal, has been disclosed, and has been passed on from previous generations. The very nature of indigenous knowledge, therefore, does not meet the criteria for intellectual property in today's IP system. ... . Some even argue that the modern IP rights system has harmful effects on indigenous peoples."

Krattiger (2007), passim

5.a [TK, GR, and bio-piracy; card-bio piracy]

"The Ecuadorian indigenous people of the Amazon have lived in the rainforest for centuries and have developed valuable knowledge which is useful for future improvements in the fields of medicine, agriculture and environmental management, amongst others. ... However, traditional knowledge has been snatched from these people without asking their permission or at least providing them with fair economic compensation. (p.209)

'Bio-piracy', understood as the unauthorized extraction of biological resources and/or associated traditional knowledge from developing countries, has become more common than ever and big industries from developed countries have gained intellectual property rights over traditional knowledge without the consent of their holders, who are often perturbed by the fact that their information is spread and used without their permission." (p.213)
Almeida (2007)

"It is not only plants that are the object of bio-piracy. Animal poisons and microorganisms too are subjects of great interest. We have to remember that Brazil presents the greatest density of biodiversity in the world for what regards amphibians, and it is at the forth place in the world for what regards reptiles. Out of poisons and toxins extracted from animals of this group (e.g. from snakes, frogs and toads), it could be possible to identify molecules essential for the development of different drugs. Out of fungi and other microorganisms, present by the millions in brazilian soil, it could happen that substances could be extracted, capable of revolutionize the antibiotic market and create drugs to fight complex pathologies. ... There are some national institutions, and even scientists, ... that send our plants, extracts, animals, toxins, microorganisms, etc. to be studied in foreign countries. By using modern techniques of molecular biology (DNA recombinant and *in vitro* cultures), it is possible to easily reproduce the totality of our natural resources." (p.38)
Calixto (2000)

"Nestlé, the world's largest food company, is facing allegations of bio-piracy after it applied for patents involving two plants found in South Africa without having negotiated permission to use them with the South African government. ... Nestec, a Nestlé subsidiary, filed four international patent applications for using the plants or extracts from them to treat hair and skin conditions such as acne, wrinkles, and hair loss. A fifth application sought patent protection for using rooibos as an anti-inflammatory. According to a report in the South African newspaper Business Day, company spokesman Ravi Pillay said that Nestlé had neither sourced the plants in South Africa nor done research on them there. South African suppliers had provided rooibos and honeybush extracts and material to two Nestlé research facilities in Switzerland and France, which then used it for basic research on active ingredients. Following this research, he said, Nestec filed several patents to protect its research results, which showed potential benefits for consumers. 'Nestec has not filed any patent relating to the plants themselves, or extracts of the plants'.
ICTSD (2010), passim

5.a [TK, GR, and bio-piracy; card-Isaac et al (2004)]

"The reason for the increase in the profile of these issues [traditional knowledge and folklore] lies, to a considerable degree, in the progress made in the research, development and commercialization of biotechnology-based products. Essentially, the enhanced commercial value of genetic material made possible by the techniques and procedures of modern biotechnology ... Due in part to the non-excludable nature of living organisms, genetic material was traditionally considered as global common property derived from generations of accumulated traditional knowledge such that no single innovator could be easily identified. ... No account, however, was taken of traditional knowledge, despite the fact that traditional knowledge often has an essential part to play in the progress of modern biotechnology by, for example, pointing the way to plants with desirable properties. In practical terms, as a global common good, traditional knowledge is deemed ineligible for intellectual property protection, while contemporary and sophisticated scientific knowledge is deemed a novel, inventive step eligible for intellectual property protection. As a result, the techniques and procedures of modern biotechnology are often applied to traditional knowledge in order to isolate and extract the beneficial characteristics useful in the development of nutraceutical (functional foods and supplements with enhanced nutritional composition) or plant-based pharmaceutical products that are then eligible for intellectual property protection and the monopoly rents that accrue. ...

Traditional knowledge plays an important role in identifying genetic material with beneficial characteristics that can be isolated and extracted from the original organism and used in the development of novel products such as nutraceuticals or pharmaceuticals. At first glance, there appears to be a real economic development opportunity for traditional knowledge holders to link with functional food and drug companies in order to access the large and growing global markets for nutraceuticals and pharmaceuticals. ... That is, naturally occurring plants themselves are still considered global common goods, but identifying the genetic sequences coding for the particular proteins that provide the desired benefit is considered to be an intellectual endeavour eligible for intellectual property protection. ... At the heart of the conflict between intellectual property rights and traditional knowledge are differing definitions of what constitutes knowledge eligible for protection. The major (but by no means the only) reason why the protection of intellectual property rights is contentious is that the capacity to use science for the development of innovations is not distributed evenly among societies. Traditional societies typically have little scientific capacity and, therefore, have no opportunity to participate in the rents that arise from innovation. Hence, the solution to inequity lies in increasing the scientific capacity of members of those societies. Raising scientific capacity is a complex and resource-intensive activity and how it can be accomplished is not transparent. However, until the capacity of traditional societies to undertake scientific innovation is increased considerably, they will not be able to share equally in the benefits associated with the 'knowledge economy'. No amount of tinkering with property rights can remove this fundamental cause of inequity."

Isaac et al (2004), passim

5.a [TK, GR, and bio-piracy; card-Thomas (2005)]

"Fuelled by such well known causes as deforestation, overpopulation and consequent pressures on land for development, large numbers of the world's plant and animal species are becoming extinct at an alarming rate. Scientists from all over the world have identified the need to intensify field studies in tropical biodiversity and to make its protection a high priority for this century.

Historically, plant genetic resources (PGR) used to move freely between countries as 'common heritage' of mankind. The developments of the latter part of the 20th century saw changes in the 'common heritage' regime governing them.... The CBD treats PGR as subject to the sovereign rights of nations and suggests the sharing of benefits arising out of the use of the intangible knowledge associated with these resources held by the traditional communities. The genetic resources and the knowledge associated with them have been made subject to a kind of property right which enables restricting access to these resources.

Reports from around the world show that there have been some unintended consequences of these legislations. At least in some cases, they have had the effect of impeding scientific research. Scientists are concerned about the difficulties encountered in obtaining access to genetic resources. Scientific research into rapidly depleting biodiversity is an imperative recognized by the CBD. Sharing of the benefits of commercialization with traditional communities who are preservers of biodiversity will be possible only if upstream scientific research leads to downstream commercialisation. ...

Historically, biological resources and PGR were considered to be the common heritage of mankind. This concept meant that GR were a gift of nature which were to be enjoyed by everyone. Concomitant with the common heritage principle was the principle of free availability, which meant free access and unlimited exchange of plant germ-plasm, the only cost associated being in collecting. Under this defacto principle, GR used to move freely across national borders except for certain phyto-sanitary and quarantine restrictions.

Biological resources were treated according to the common heritage principle because they are the product of collective invention. The common heritage principle recognizes the collective ownership of knowledge where the invention occurs in an incremental way without identifiable contributors. The local foundation of the application of the common heritage principle lies in the nature of crop genetic resources, the universal process of dispersal and diffusion, and the historical practices of reciprocity. This is particularly so in crop genetic resources, as they evolve through a process of mutation, exchange and natural selection. ...

Open access is another key characteristic of the common heritage principle. Open access also implied reciprocity between the collector of the genetic resources and the provider to let the benefit of the collective knowledge flow in both directions. Thus, under the common heritage regime, genetic resources were regarded as an international public good used by scientists to produce other public goods."

Thomas (2005), passim

But the actual definition of 'bio-piracy' is however uneasy; we shall now scour about the Maze and try and find examples of specific '*historiae*' whose more detailed analysis could help.

The main difficulty for us is in the way expressions like 'piracy', 'snatching knowledge', 'information used ... without their [the alleged owners'] permission' and the like are used.

Isaac et al (2004) are clear: "At the heart of the conflict between intellectual property rights and traditional knowledge are differing definitions of what constitutes knowledge eligible for protection".

But here, no doubt, we are speaking about 'knowledge', not about 'objects'. A 'stolen object' is lost to its previous owner; a 'stolen knowledge' is not. What is possibly lost, is the possibility of selling that 'knowledge' again, or better to 'use' that knowledge, to develop it, to exploit its utilisation by others, ...

Isaac et al (2004) express the difficulties inherent to this last choice (namely, could you learn how to 'make use' of that knowledge that you are afraid could be pirated?) in a lucid, dispassionate way that you find only rarely in the Maze:

"The major (but by no means the only) reason why the protection of intellectual property rights is contentious is that the capacity to use science for the development of innovations is not distributed evenly among societies. Traditional societies typically have little scientific capacity and, therefore, have no opportunity to participate in the rents that arise from innovation. Hence, the solution to inequity lies in increasing the scientific capacity of members of those societies. Raising scientific capacity is a complex and resource-intensive activity and how it can be accomplished is not transparent. However, until the capacity of traditional societies to undertake scientific innovation is increased considerably, they will not be able to share equally in the benefits associated with the 'knowledge economy'. No amount of tinkering with property rights can remove this fundamental cause of inequity."

It is perfect, but these difficulties are so often forgotten; and several bio-piracy items in the Maze prefer to ignore them, and dream of indigenous communities capable of forestalling bio-piracy by direct exploitation of TK GR knowledge.

Here is a list of case studies of patents obtained out of (perhaps alleged) bio-piracy:

1. the Ayahuasca case (Banisteriopsis caapi)
   (Almeida, 2007, pp.220-222)
   (Calixto, 2000, p.38)

2. the Epipedobates case (Epipedobates tricolor)
   (Almeida, 2007, p.222)

3. the Espinheira-santa case (Maytenus ilicifolia)
   (Calixto, 2000, p.38)

4. the Maca case (Lepidium meyenii)
   (Hansen et al, 2003, p.11)

As we shall see now, by looking more in details at specific items of bio-piracy accusations present in the Maze, the systematic identification of 'loosing the prior knowledge privilege to use a knowledge' with the 'loosing an object to the hands of others' is confused and confusing, and generates a lot of difficulties in examining the different (often quoted) claims of GR piracy.

There are cases of obscure charges on bio-piracy on non-cultivated plants:

5.a [TK and GR, the Ayahuasca patent; card-Fecteau (2001)]

"In 1986, Loren Miller, an American scientist and entrepreneur, obtained a U.S. patent on a strain of the ayahuasca vine Ayahuasca [*Banisteriopsis caapi*], a vine native to the Amazon Rain Forest, has been used by healers and religious leaders throughout the Amazon for generations. For hundreds of years, shamans have used ayahuasca to treat sicknesses, contact spirits, and foresee the future. Many indigenous Amazon tribes also view the plant as a sacred symbol of their religion.

Several years after its issuance, tribal leaders learned of Miller's patent. They were understandably angry and incredulous that a foreigner had patented a plant that they had been using and worshiping for hundreds of years. [Under the U.S. Patent Act, applicants cannot patent medicinal plants in their natural state] Voicing his countrymen's frustration, Antonio Jacanamijoy, the leader of a council representing more than 400 indigenous tribes and groups in South America, stated, '[o]ur ancestors learned the knowledge of this medicine and we are the owners of this knowledge'. In 1999, Jacanimijoy's council applied for and obtained a rejection of the ayahuasca patent from the U.S. Patent and Trademark Office. ...

As described above, upon learning of Loren Miller's patent on ayahuasca, many indigenous tribes of South America organized to oppose the patent on the ground that the vine was a sacred religious symbol and a known medicinal herb. This effort by the indigenous tribesmen and their attorneys proved very successful, and on November 3, 1999, the United States Patent and Trademark Office ultimately rejected Miller's patent. ...

In 1974, a tribe in Ecuador gave Loren Miller samples of a local ayahuasca vine. In return for the plants, Miller claims to have built a school for the tribe's people. Upon returning to the United States, Miller cultivated the plant in Hawaii and developed a stable variety that was eligible for a patent. He then formed a small company, International Plant Medicine, to investigate whether the plant had any useful purpose. In 1986, Miller obtained a plant patent on his ayahuasca, which he called 'Da Vine'. In his patent application, he stated merely that he had originally obtained the ayahuasca from a 'domestic garden in the Amazon rain-forest of South America'. He claimed that Da Vine was a new and unique variety of ayahuasca distinct from other forms primarily because of the color of its flower petals. ...

The CIEL [Center for International Environmental Law] attorneys further argued that the Da Vine patent violated the Plant Patent Act because the vine is 'found in an uncultivated state'. Lastly, the attorneys charged that the patent on ayahuasca violated the Patent Act's utility requirement because issuing a patent on a plant that is sacred to indigenous peoples violates notions of public policy and morality. On May 28, 1999, based on the fact that Da Vine was identical to other specimens of ayahuasca found in U.S. herbarium collections, the PTO [Patent and Trademark Office] granted the Reexamination Request. In November 1999, after reviewing the facts, the PTO ordered the rejection of Miller's patent on the narrow ground that the same plant had been described in herbarium sheets in Chicago's Field Museum over a year prior to Miller's application."

Fecteau (2001), passim

5.a [TK, GR, and the Ayahuasca patent; card-Miller's patent]

"Shamans of many indigenous tribes of the Amazon collect the plant [Banisteriopsis caapi] and process it with other rainforest plants, according to traditional techniques, to produce a ceremonial drink 'ayahuasca', also called 'yagé'. The shamans (traditional healers and religious leaders) use ayahuasca in religious and healing ceremonies to heal the sick, meet with spirits, and divine the future. According to tradition, ayahuasca is prepared and administered only under the guidance of a shaman. Plant Patent No. 5,751, issued to Loren Miller on June 17, 1986, claims rights over a supposed variety of B.caapi, which Mr. Miller dubbed 'Da Vine' [by Patent No. 5,751 Mr.Miller 'obtained exclusive rights to sell and breed the plant].

Our request to the Patent and Trademark Office (PTO) has two parts, described below. The request for re-examination seeks cancellation of this particular patent. In a letter to the Commissioner, we call for a more general review of the treatment of traditional knowledge and biological diversity under United States patent laws.

The Request for Re-examination: To obtain a plant patent, an applicant must show that the plant is a new variety; that it is distinct from existing forms; and that it is not found in an uncultivated state (35 U.S.C. § 161). Such patents are authorized under a 1930 law designed to reward efforts of growers who develop new varieties of crops such as fruit trees or grapevines. Plant Patent 5,751 implies that 'Da Vine' is novel because of its medicinal qualities. In fact, these characteristics of B.caapi were already well known — i.e. part of 'prior art' in terms of patent law — long before the patent was issued: indigenous people have known of the plant's medicinal and psychotherapeutic uses for many generations. The patent claims to have identified a variety of the species with new and distinctive physical features, particularly flower color. But according to Professor William A. Anderson of the University of Michigan — a leading expert on the plant family to which B.caapi belongs — the features described in the patent are typical of the species as a whole, and are documented as 'prior art' in the records of major herbariums.

By law, plant patents cannot be awarded to plants 'found in an uncultivated state'. But this plant grows naturally throughout the Amazon basin. Intellectual property rights (which include patents) are designed to further the public good by striking the right balance between private rights and the public domain. They are intended to reward those who contribute a new invention to society — not those who merely register something they did nothing to create.

There is a limit to what should be claimed as private property under United States patent laws. This patent crosses that limit. It seeks to privatize something that is held sacred by many indigenous peoples of the Amazon rainforest. A private intellectual property claim should be denied when it offends deeply held moral and cultural values."
CIEL (1999), passim

[The patent was overturned in 1999; however, in 2001, the United States Patent Office reinstated the patent. The Miller patent expired in 2003. *B.caapi* is now being cultivated commercially in Hawaii]

From both cards, it seems clear that the plant was (at least when it arrived into the hands of Miller) un-cultivated. Later, was it or not 'a new variety', as was decided at the beginning by the U.S. PT Office, is out of our competence to say; but the fact that the PTO rejected Miller's patent in 1999 seems to imply that it was not. This is a possible scientific, biological ground on which discussion and analysis is possible. But how and when Miller's patent offended the 'sacred symbol of their [the indigenous] religion'? Miller's patent, if valid, would in no way impede the traditional use of the plant by its traditional users: on the contrary, the patent would guarantee that Miller's plant were a different variety, and therefore the use of the different Amazonian variety could not be restricted in any way. But try, and pose in these terms the problem while going through the Maze, where bad faith and (intended) confusion dominate, and you will be shot at!

- obscure charges on bio-piracy on cultivated plants:

5.a [TK, GR, and bio-piracy; card-enola saga (2005)]

"The Enola bean patent case demonstrates that intellectual property challenges are not a viable means of 'correcting' abuses in the patent system. Just about everyone agrees that the Enola bean patent is technically invalid – the bean, in fact, is genetically identical to a pre-existing Mexican bean variety that was previously known and grown in the United States. The patent is also morally unacceptable because it is predatory on the knowledge and genetic resources of indigenous peoples and farming communities, who are the true innovators of Mexico's yellow beans. The real crime is that, despite the legal challenge, the US patent system has allowed the patent owner to use bureaucratic delays and diversion to legally extend his exclusive monopoly on a bean variety of Mexican origin for over 6 years (and potentially more) – that's nearly one third of the 20-year patent term. ...

Almost six years ago, ETC Group (then RAFI) denounced the Enola bean patent as "Mexican bean biopiracy" and demanded that the patent be legally challenged and revoked. We requested that FAO and the Consultative Group on International Agricultural Research (CGIAR) investigate the patent as a likely violation of their 1994 Trust agreement that obliges them to keep designated crop germplasm in the public domain and off-limits to intellectual property claims.

It was five years ago that the Colombia-based International Center for Tropical Agriculture (CIAT, a CGIAR center), with support from FAO, filed an official challenge of the now infamous Enola bean patent at the US-PTO in Washington. The Enola bean patent case holds a special place in the "biopiracy hall of shame" because the owner of the patent, the president of a Colorado-based seed company, Larry Proctor, won his patent on a yellow bean variety of Mexican origin. US patent number 5,894,079 was issued April 13, 1999. (Proctor bought a bag of commercial beans in Mexico, planted them in Colorado [US], and did several years of selection.) Not long after, armed with both a US patent and plant breeders' rights certificate, Proctor charged that Mexican farmers were infringing his monopoly by selling yellow beans in the USA. Shipments of yellow beans were stopped at the Mexico/US border, and Mexican farmers lost lucrative markets. ... Not-So-Final Rejection: On April 14, 2005 the US-PTO released its 'final rejection' – a 26- page decision in which the PTO examiner explains her decision to cancel or reject all of the patent's 64 claims. But wait—not so fast! The PTO bends over backwards to give the patent holder the last word. ... On 14 October 2005 Proctor filed his request and won a 3- month reprieve. ... ETC Group does not know when the US-PTO will issue its truly final decision. We do know that expert bean breeders and geneticists have offered unambiguous findings that the Enola bean is not new or unique. In 2003 geneticists performed "genetic fingerprinting" of Proctor's patented yellow bean and found that his claim of novelty was spurious – the patented Enola bean is, not surprisingly, identical to a pre-existing Mexican cultivar.1 'We conclude that Enola is neither a novel nor non-obvious derivative from a Mexican yellow bean cultivar, probably 'Azufrado Peruano 87.' If the patent is ultimately rejected, it will be a hollow victory of hundreds of Mexican and US farmers who suffered damages as a result of the unjust monopoly will not be compensated for their losses."

enola-saga (2005)

We find the same, obscure pattern in this classical, often quoted bio-piracy case. The patent was granted, under the affirmation that the variety presented to the U.S. PT Office was 'a new variety' and, therefore, different from the enola-beans variety cultivated in Mexico. Being a different variety, it could not be used to block the trade of the different variety coming from Mexico. To try, and block that trade, it would have meant for Proctor (the patent's owner) to recognize that 'his' enola-beans variety was the same as the Mexican one, destroying at the same time the validity of his claim to the patent. At the end, he patent was revoked (as in the previous Ayahuasca case) because it was recognized that there was no novelty in the variety presented to the PTO; but not because it was 'predatory on the knowledge and genetic resources of indigenous people and farming communities', a moral standing you feel rather extraneous to the U.S. PT Office!

- third: sharing of benefits

As we have seen, CBD (1992) seems to have no doubts on the future of the collaboration between UK stakeholders and GR users.

As a matter of fact, CBD (1992) affirms that the common aim will be to "encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices." And so a new powerful 'mantra' is born: 'the equitable sharing of the benefits'!

5.a [TK, GR, and sharing of benefits; card-sharing of benefits]

"Each contracting Party shall, as far as possible and as appropriate:
...
(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovation and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices. (p.3)

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding." (p.5)

CBD, 1992

"Within the context of scientific progress, modern intellectual property laws have allowed these industries to monopolize the benefits derived from their use of indigenous knowledge with disregard for the moral rights and material (financial) interests of indigenous peoples themselves. ... However, there is good news. Intellectual property rights do not have to work against the needs and interests of traditional knowledge holders. In fact, intellectual property rights can actually benefit traditional knowledge holders by promoting both their material and moral interests. The key to realizing these benefits is in understanding how the intellectual property rights system works and the place that traditional knowledge can have in the system." (p.5)

Hansen et al, 2003

A few years later, Nagoya (2010) repeated the 'mantra' *'ad satietatem'*:

5.a [TK, GR, and sharing of benefits; card-Nagoya (2010)]

"*Recalling* that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and recognizing that this Protocol pursues the implementation of this objective within the Convention, ... (p.2)

Recognizing the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization, ... (p.2)

Recognizing that an innovative solution is required to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent, ... (p.3)

Recalling the relevance of Article 8(j) of the Convention as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge, ... (p.3)

10. Parties shall consider the need for and modalities of a global multilateral benefitsharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally. (p.8)

12- 2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge. (p.9)

12-3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:
(a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
(b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and
(c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources. (p.9)

Nagoya, 2010
www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

5.a [TK, GR, and sharing of benefits; card-Nagoya(2010) Annex]

"Annex

MONETARY AND NON-MONETARY BENEFITS

1. Monetary benefits may include, but not be limited to:
(a) Access fees/fee per sample collected or otherwise acquired;
(b) Up-front payments;
(c) Milestone payments;
(d) Payment of royalties;
(e) Licence fees in case of commercialization;
(f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
(g) Salaries and preferential terms where mutually agreed;
(h) Research funding;
(i) Joint ventures;
(j) Joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:
(b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;
(c) Participation in product development;
(d) Collaboration, cooperation and contribution in education and training;
(e) Admittance to *ex situ* facilities of genetic resources and to databases;
(f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
(g) Strengthening capacities for technology transfer;
(h) Institutional capacity-building;
(i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
(j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;
(k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
(l) Contributions to the local economy;
(m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources;
(n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
(o) Food and livelihood security benefits;
(p) Social recognition;
(q) Joint ownership of relevant intellectual property rights." (pp.24-25)

Nagoya (2010)
www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

Just a few critical points associated with this expression (it is true that 'mantras' are, by definition, empty; but the very action of trying to open them, to deflate them in a way, can create a lot of noise and dust); assume for simplicity that the GR we are talking about is a plant:

- who are the 'stakeholders', in every specific case?
-- the shaman or cacique
   the healing experts in the community
   the whole indigenous community
   the region were the plant grows
   the States where that region is situated
   ... ?

- what the presumed stakeholders did to ask for an 'equitable share'?
-- they used that plant since 'ancestral' times for the very therapeutic scope for which the 'sharing of benefits' is asked
   they used that plant since 'ancestral' times for a different therapeutic scope
   they just knew that the plant spontaneously grew in their land
   they didn't even know that the plant spontaneously grew in their land
   ... ?

Our readers/travellers throughout the Maze will be probably surprised that this kind of naive questions is never raised; but why to try and open a 'mantra' when some money is perhaps at stake? But we have indeed found a rather lucid and rare analysis of the political and economical reasons that justify this silence of the critical minds, a silence that has led to a sort of 'biodiversity fetishism':

"Brazilian legal policy, with regard to both ABS [Access and Benefit Sharing] and IPRs, has been dictated by fear and political initiative. The fear is that of losing control of genetic resources and natural substances during the course of innovation processes: these are frequently long, involve many different stakeholders, and make it difficult to identify the original natural items in the final outcome. The political initiative has involved reaffirming both Brazil’s sovereignty over biodiversity with regard to third countries and the pro-eminence of state authorities with respect to its own citizens. The result may be termed biodiversity fetishism: biodiversity has become an object of economic fantasising, a mirror of the national identity and a political taboo, embodied in an ABS regime which has resulted in prevention of access and failure to use the resources." (p.134)

Filoche (2012)

- forth: GR conservation and the Indigenous Law System(s)

The relationship between the contemporary demands for GR conservation and the practices, traditions and rituals specific to any IKS and its associated TK is best synthesised by Desmet's sentence:

"Also in regard to traditional knowledge, however, the rights of indigenous people are subordinate to the imperatives of nature conservation. ... This restriction is understandable from a conservationist point of view. From an indigenous peoples' rights perspective, however, the question rises what to do with traditional knowledge and practices that may to some extend be harmful to the environment, but occupy a central place in the cosmology and culture of indigenous people." (p.514)

Desmet (2011a)

5.a [TK and ILS (Indigenous Law system(s)); card-Desmet (2011)]

"On paper, the Peruvian state legal framework has made some progress in incorporating respect for customary legal systems. For the greater part, however, the recognition of customary norms, organizational forms and decision-making mechanisms is subsequently weakened or invalidated in various strategies, such as: the addition of qualifying language limiting application; the requirement of compatibility with national state laws and/or international human rights law; and the imposition in the law of norms, organizational structures or decision-making processes that are foreign to the customary legal systems concerned." (Executive summary)
...

This article analyses the interaction between customary legal systems and the formal legal system of Peru. It will show that the recognition of customary law by the Peruvian state legal system does not lead to real acceptance of customary norms and structures. This is demonstrated by the Peruvian legislation on autonomy, land rights and nature conservation. The implications of such a half-hearted recognition of customary law in state legislation at the local level are illustrated with the experiences of the Airo Pai (Secoya), an indigenous people living in the extreme north of the country. (p.6)

The relevance of customary legal systems within nature conservation initiatives has been recognized at the international level. For example, the Corobici Recommendations, adopted at the international Expert Meeting on the Implementation of Traditional Forest Related Knowledge and the Implementation of Related International Commitments in San José, Costa Rica, in 2004, address the issue of traditional forest-related knowledge. The following recommendation on conservation and protected areas was included:

Reform national forest and conservation policies, laws, institutions, and land tenure regimes to recognize indigenous peoples' unambiguous and secure rights to collectively own, manage, and control their territories, forests and other natural resources, *taking into account their* traditional lifestyles and *customary systems of tenure*, especially those relevant to traditional knowledge. (p.17)

Also, with regard to nature conservation, the relevance of customary legal systems is being increasingly acknowledged at the international level, as shown, for instance, from the advancement of the concept of Indigenous Peoples' and Community Conserved Areas. Although in Peru the protected area category of communal reserves to some extent accommodates the customs and traditions of indigenous peoples, there are some legal clauses limiting the weight given to customary legal systems. Provisions on the recognition or application of customary law are therefore often mitigated by qualifiers that pave the way for arbitrary interpretations. Customary law or traditional decision-making mechanisms are, for instance, only applied 'where appropriate'. No real and effective space is given to the application of rules other than those originating in the state legal system. (p.24)

Desmet (2011)

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while the angelical, almost mystical position, according to which all elements of any IKS and its associated TK, due to their assumed 'ancestral' age, cannot but respect the very modern, scientific demands for strict and careful conservation, is well expressed by Almeida (2007) in next card:

5.a [TK and sustainable use of the environment; card-biodiversity]

"The Amazon native groups have for centuries successfully managed the tropical forest where they live. This fact constitutes the strongest argument for traditional knowledge as an example to follow for achieving sustainable use of the environment. For instance, agricultural practices are based on shifting cultivation, where indigenous groups take advantage of the natural forest structure and small human-made clearings to plant mixed crops ... The 'garden plots' are usually cultivated for three to ten years and then abandoned to allow the soil to regenerate and become part of the forest once again. Occasionally, after that period of time has elapsed, the cultivation plots may be used again ... In addition to revealing great knowledge of the dynamics and functioning of tropical ecosystems, traditional agricultural systems make self-subsistence viable and keep an ecological equilibrium." (p.219)

Almeida (2007)

"Ellen Desmet emphasizes the importance of the local level. In her view, the state of mind and behaviour prevailing *within* the communities with respect to property, conservation of nature and natural resources, and more in general management of land, is key to designing an efficient legal framework that balances the rights and needs of local communities with the imperatives of nature conservation. (Foreword)
...

Slash-and-burn agriculture has long been negatively perceived in conservation science; it is now recognized that this practice relies on a sustained knowledge of and insight in the functioning of forest ecosystems. Thus, although in most cases no explicit conservation ethic can be attached to local practices, they often entail beneficial consequences for the natural environment." (p.13)
...

The [Peruvian] Law of 1997 recognizes the importance and value of the kwoledge and practice of peasants and native communities for the conservation and sustainability of biodiversity. The informed consent of the communities is required for the use of this knowledge, as well as the just and fair distribution of the benefits derived of its use. Also in regard to traditional knowledge, however, the rights of indigenous people are subordinate to the imperatives of nature conservation. ... This restriction is understandable from a conservationist point of view. From an indigenous peoples' rights perspective, however, the question rises what to do with traditional knowledge and practices that may to some extend be harmful to the environment, but occupy a central place in the cosmology and culture of indigenous people." (p.514)

Desmet (2011a)

"Preamble ... Noting further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings ..." (p.3)

CBD (2002)

February 2014: things are coming again to a standstill:

"New WIPO Text On Genetic Resources Misappropriation; Disclosure Still Uncertain

World Intellectual Property Organization member countries are working to get past their differences this week toward agreement on a way to protect genetic resources from biopiracy. A new document shows focus on misappropriation as a policy objective, and that a bridge still needs to be found on the issue of mandatory disclosure of origin in patent applications. After bringing ambassadors and senior officials into the discussion this week at the outset of the 26th session [sic!] of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) with inconclusive results, technical experts worked on a draft text of what could become an international instrument of protection of genetic resources. At the end of the afternoon today (5 February), a new text was issued by the WIPO secretariat. The new text was engineered by experts working in small groups aided in their tasks by facilitators.

Ian Goss of Australia, acting as 'friend of the chair', gave a brief presentation of the new text and its main differences compared to the original text that delegates had been working from and carried over from the last session of the IGC on genetic resources, in February 2013. In particular, there is now one policy objective instead of two, indicating an effort at agreeing on the most important objective of the instrument. Goss said the policy objective was now focused on preventing the misappropriation of genetic resources and associated traditional knowledge. The new paragraph contains ingredients from the two previous options, but giving a high order to misappropriation as a core policy issue, he said. The reference to compliance with international and national laws relating to benefit-sharing has been replaced by a broader reference to complementarity with international agreements. Goss mentioned that the substantive area discussed was a disclosure requirement, in order to try to move towards some common ground. This has been a major bone of contention in past sessions of the IGC. The work on this issue is still in progress, Goss said."
Saez (2014a)

"Amid Proposals, Ambassadors Fail To Unlock WIPO Talks On TK, GRs

Four Questions:

The discussion was organised around four questions addressed to ambassadors:
- what are the key policy issues and why
- what are the suggestions for common ground
- which issues belong to an international or a national instrument
- what process and what new modalities might advance the process."

This is at the heart of the work of the committee, which has been discussing for years how to prevent misappropriation and biopiracy. However, it appears not all delegations have the same definition of the objectives of the instrument to be developed."
Saez (2014)

A rather more complex question:

Is there an unsolvable contradiction between the rather general acceptation of the opinion that TK on plants should be *'sui generis'* recognized:

"Siempre vienen a nuestras comunidades a sacarnos información de cómo hacemos una u otra cosa, de cómo nos curamos. Nos utilizan y luego no siquiera nos nombran en sus estudios', refirió. A través de este registro, cualquier ente o empresa que quiera apropiarse de las técnicas empleadas por los pueblos indígenas en el uso de dichas plantas, deberá solicitar su permiso y compensarlos de forma justa."
Mujeres indígenas (2013)

and the strong defence of the principle that:

'no-patents on seeds!'
("L'octroi de brevets sur les plantes doit être systématiquement refusé" - DB (2014), p.23)?

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add 5.a

Section 5.b - GRTK embeds F (sometimes 'Cultural Expressions' - CE - and even 'Traditional Cultural Expressions' - TCE - are preferred to Folklore - F)

We can listen here to the voice of WIPO:

"The collections of TCEs held in cultural institutions are priceless records of ancient traditions and community histories integral to indigenous peoples' identity and social continuity. They reflect a community's history, traditions, values and beliefs. In many cases, these TCEs have been documented by researchers from outside the community. The rights to that documentation – and the documentation itself – are often not owned by the community, but by those who made the films, recordings, photographs, etc. As a result, communities often believe that because they are not the owners, they have lost control over the content."
www.wipo.int/wipo_magazine/en/2010/02/article_0009.html

and of its Director General:

"Francis Gurry, Director General of WIPO, discusses what the World Intellectual Property Organisation is doing within the context of Indigenous Cultural Intellectual Property. Les Malezer, Foundation for Aboriginal and Islander Research Action, Australia and Marisella Ouma, Executive Director, Kenya Copyright Board also talk about the importance of the worldwide protection of Indigenous traditional knowledge and cultural expressions. WIPO is working to address these issues for all Indigenous artists."
TKBulletin (2013)

and even more, quite recently:

"Countless innovative and creative businesses draw inspiration from the world's rich and diverse traditional cultures. Innovations and creations rooted in traditional knowledge (TK) and traditional cultural expressions (TCEs) enrich the creative economy, foster community enterprise development and boost job creation, skills development and tourism. Revenues from the sale of handicrafts made using traditional methods, skills and knowledge transmitted across the generations are often central to the livelihood of many communities. Indigenous peoples and local communities are, in general, aware of the commercial value of their TK and TCEs and their potential to promote economic development. But many of the TK and TCE based products appearing on the market, ranging from clothing designs to pharmaceutical products are created by third parties without the permission of the communities that hold the TK and TCEs. Many of the objects, images or symbols commercialized in this way hold great significance for indigenous communities and their unauthorized use can cause them economic, spiritual or cultural harm. ... There are, nevertheless, huge challenges associated with establishing and applying more respectful, ethical, and effective policies to protect indigenous cultural heritage, especially where fundamental differences exist in terms of how heritage is perceived and defined. Experience in rolling out the award-winning Intellectual Property Issues in Cultural Heritage (IPinCH) Project in Canada highlights the importance of working with individual communities at the grassroots level to understand what their priorities are and to identify common ground to achieve global understanding about how their rights and interests may best be protected."
Vézina et al (2014)

Every sounds clear, transparent and almost obvious; but hear!

"The EU and several of its member states took the floor on 1 and 2 April to strongly oppose what they thought might be an effort at merging the TK and TCE texts during the cross-cutting issues discussions. They said TK and TCEs were completely different and the texts should be distinct and kept apart. This issue was settled by the IGC chair, Amb. Wayne McCook of Jamaica, who declared that the committee was in no way working towards a merging of the texts."
Saez (2014b)

There are, indeed, 'huge challenges'. The sub-space occupied by F-CE-TCE in the Maze, GRTKF/F, is possibly too large a bite, if it has to include 'folk riddles'!

"The term 'expression of folklore' is defined in the Act [Sri Lanka Intellectual Property Act, 2003] as a group oriented and tradition based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including: folktales, folk poetry, and folk riddles, folk songs and instrumental folk music; folk dances and folk plays, and productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, wood work, metal-ware, jewellery, handicrafts, costumes and indigenous textiles."
Abeyesekere (2009), p.3

and perhaps even more, if we accept Morolong's definition:

"Folklore is what 'human societies have owned through tradition from generation to generation'. It includes literature, practices, arts, and science. Folklore is living, and is not confined to the past."
Morolong (2007)

This extension of the semantic domain of the term 'folklore' (which could lead to TK = Traditional Folklore), this enlargement of the definition of what should be 'respected, protected and promoted' by the required laws for the 'legal protection' of folklore, could probably make such laws, or/and such '*sui generis*' IPRs, impossible to reach. But a less extreme and less over-covering domain is that analysed by Lucas-Schloetter:

Lucas-Schloetter starts by quoting a definition of 'folklore' as given by Terlumun A Yagba:

"For every ethnic group 'folklore' is its identity; for a country, it is the root of the nation's cultural tradition; for all mankind, it is the rich and varied but non-regenerative resources as well as the incomparably valuable heritage of human society."

She does not indorse explicitly this extra large definition, but she seems to suspect that it contains an important danger (as we shall see later on).

She goes on and gives us a more classical, 'Western' definition, from the supposed creator of the term, the English archaeologist W.G.Thoms (1846):

"The idea of the traditions, customs and superstitions of the members of a certain community of people."
Lucas-Schloetter (2008)

But here again, danger ahead! Could you ever have the courage to fight for the 'respect, protection and promotion' of 'superstitions'?

Then everything seems to boil down to a comfortable, practical, no-risky change from 'folklore' to 'expressions of folklore': these are easier to list, and they do not seem to hide pitfalls:

"The forms in which the different types of expressions of folklore are exploited around the world are extremely varied. Amonst the most obvious are the production of indigenous craft objects for the souvenir market, the more or less slavish imitation of aboriginal works of art on T-shirts, carpets or bank notes, for instance, or the use of famous Indian tribes as a brand name, such as Cherokee for a Daimler-Chrysler car model."
Lucas-Schloetter (2008), passim

If your put now together Abeyesekere's, Morolong and in particular Terlumun A Yagba's definitions: "[folklore], for all mankind, is the rich and varied but non-regenerative resources as well as the incomparably valuable heritage of human society", and associate them with the repeated affirmation "[In the majority of legislations on the protection of folklore] it appears appropriate to lay down expressly that the protection established is not limited in time" (Lucas-Schloetter (2008), p.382), you are obliged to reach the strange conclusion that no modern 'Western' technical, scientific, medical, literary, artistic element of knowledge could ever be used by and inside any UDCountry, because it would have to be accepted as an integral part of the 'heritage of ['Western'] society'! Even for a modest Monna Lisa thrichromatic reproduction, people and communities members of UDCountries should pay some money (to whom, to what? to the Louvre? to Italy?).

These are the absurd conclusions made inevitable by the unduly, arbitrary, rhetorical, interested extensions of the meaning of 'folklore'.

Next card will give our readers-travellers reasons to laugh and, at the same time, to be perplexed (just as they were at the beginning of our trip) on the way confusing words (like: 'the yams spirit who would climb ...') and confused claims (like: 'to protect the cultural and intellectual property rights ...') are just used to ask for money.

5.b [TK, IPRs and folklore; card-Blakeney (1998)]

"Agitation, particularly among developing countries, for an international instrument providing for the protection of the cultural and intellectual property rights of indigenous peoples, precipitated a joint UNESCO/WIPO World Forum on the Protection of Folklore to be convened in Phuket, Thailand, in April 1997. One of the results of this Forum was the institution by Wipo in its 1998-99 biennium of fact-finding missions 'to identify and explore the intellectual property needs, rights and expectations of the holders of traditional knowledge and innovations, in order to promote the contribution of the intellectual property system to their social, cultural and economic development'. ... Among the matters considered by the Expert Mission were:

- the feasibility of establishing databases of traditional knowledge;
- the need for, and possible nature and scope of, new or adapted forms of protection for expressions of folklore; and
- the use of the existing intellectual property system for the beneficial commercialization of expressions of folklore, such as by way of multimedla and Internet technologies.

Among the reasons for the current activism in this area is the perception that existing intellectual property laws are inadequate in a number of important particulars to protect the cultural and intellectual property rights of indigenous peoples. ... The development of sui generis solutions providing for the protection of intellectual property rights in plant varieties, integrated circuits and databases, has encouraged the view that the categories of intellectual property rights are not closed. A particular deficiency of the existing copyright regime in protecting the intellectual property rights of indigenous peoples in their cultural expressions has been the refusal of copyright courts to allow the indigenous communities to enforce communal IPRs in those cultural expressions.
...

The 1991 case has concerned the issue by the Reserve *Bank* of Austraha of a commemorative banknote which reproduced the design of a Morning Star Pole created by Terry Yumbulul, an Aboriginal artist. Evidence was tendered which established that Morning Star Poles had a central role in Aboriginal ceremonies commemorating the deaths of important persons and in inter-clan relationships. The particular pole created by Mr Yumbulul was carved from cotton wood and surmounted with a crown of lorikeet and white cockatoo feathers, representing the rays of the Morning Star. Painted on the pole was a yam leaf design representing the yam spirit man who would climb up the pole carrying the spirit of a deceased person to the Morning Star. ...

[A] case concerned the importation into Australia of a number of carpets woven in Vietnam which incorporated Aboriginal designs. The applicants were three living Aboriginal artists and the Public Trustee claiming on behalf of the estates of five deceased Aboriginal artists. Each of the artists in question had works which were either reproduced in portfolios of Aboriginal art which were produced for the Australian National Gallery (ANG), or in portfolios published by the Austrahan Government Printer for the Austrahan Information Service (AIs). ... The final artwork, it was held, was substantially reproduced, albeit in a more simplified form."

Blakeney (1998), passim

But the problem is that, as Italians use to say: 'qui non c'è niente da ridere, c'è da piangere!'; how and whence did this situation, fraught of hypocrisy, bad faith, wishful thinking and money hopes, arise?

It is funny to discover 'Western' sociologists, politicians and diplomats, working in and for various International Organizations, so eager to propose and/adhere to an a-critical 'respect, protection and promotion' of Cultural Expressions. How can they hope people and communities in UDCountries could forget the utter contempt 'Western' invaders, missionaries, businessmen and scientists openly expressed towards 'primitive' CE?

See next card, to appreciate the civilising activity of Mother Hubbard, so happy to have covered the beautiful but dangerous nudity of indigenous girls (a clear-cut CE!) by a no-shape frock of cotton (called, even nowadays, 'a mother hubbard' in the South-East islands):

5.b [CE and the Western respect for them; card-Mother Hubbard + photo]



Tahitian girls in their unadorned **'Mother Hubbard's'** between 1880 and 1889.
en.wikipedia.org/wiki/Mother_Hubbard_dress

"... She answered him, suddenly smiling, and then let herself into the water again. She swam easily and her hair spread out behind her. He watched her cross the pool and climb out on the bank. Like all the natives she bathed in a Mother Hubbard, and the water had made it cling to her slight body. ...

'I like it when I'm alone', she said. 'So do I'. She laughed with the childlike frankness of the native. She slipped a dry Mother Hubbard over her head and, letting down the wet one, stepped out of it. ...

They came from all parts of the island for this, since gaieties are few in Upolu; and you saw there all the society of the place, the white ladies keeping a good deal to themselves, the half-castes very elegant in American clothes, the natives, strings of dark girls in white Mother Hubbards and young men in unaccustomed ducks and white shoes. It was all very smart and gay. ...

He wondered what strange thoughts wandered through her head. At last she got up, and for a minute or two she was hidden from his gaze; then he saw her again, wearing a Mother Hubbard, and with her little bare feet she stepped delicately over the mossy bank. She came to the water's edge, and softly, without a splash, let herself down. ...

His mother-in-law was pleased to see him, and so was the old, wrinkled beldame, her mother; natives and half-castes came in, and they all sat round, beaming on him. Brevald had a bottle of whisky and everyone who came was given a nip. Lawson sat with his little dark-skinned boy on his knees, they had taken his English clothes off him and he was stark, with Ethel by his side in a Mother Hubbard. ...

He found Ethel dressing to go out. As a rule she lay about in a Mother Hubbard, barefoot, with a flower in her dark hair; but now, in white silk stockings and high-heeled shoes, she was doing up a pink muslin dress which was the newest she had. ...

He tried to hold her, but she pushed him aside. She stood up. She began to take off her dress. She kicked off her shoes and slid the stockings off her feet, then she slipped on her old Mother Hubbard."

Somerset Maugham (1921), passim

A **Mother Hubbard dress** is a long, wide, loose-fitting gown with long sleeves and a high neck. Intended to cover as much skin as possible, it was introduced by missionaries in Polynesia to 'civilise' those whom they considered half-naked savages of the South Seas islands. Although this Victorian remnant has disappeared elsewhere in the world, it is still worn by Pacific women, who have altered it into a gayer and lighter (less hot) garment, using cotton sheets, often printed in brightly coloured floral patterns.

Perhaps the beginning of use of 'empty words' on this theme can be traced to the **International Covenant on Economic, Social and Cultural Rights (1976):**

"Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."
UN-ICESCR (1976)

but surely things got worse with the **UNESCO Universal Declaration on Cultural Diversity (2001):**

"Committed to the full implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized legal instruments, such as the two International Covenants of 1966 relating respectively to civil and political rights and to economic, social and cultural rights,

Recalling that the Preamble to the Constitution of UNESCO affirms 'that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern ...

Affirming that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security ...

Proclaims the following principles and adopts the present Declaration:
...

Article 4 – Human rights as guarantees of cultural diversity

The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope."

Unesco (2001), passim

(just a warning to fellow-travellers in the Maze: when you find these ritual, almost liturgical lists: 'committed, recalling, affirming, proclaiming, ...', if you just can, run away; there is nothing of interest following)

as well as by the **UNESCO convention for the safeguard of the intangible cultural patrimony** (UNESCO, 2003):

"1. The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the

purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development."

UNESCO (2003)

a web of words, where everybody will be able to fish out the sentence, the paragraph, the word that could be useful ...

Just a few words and cards more, to expose more clearly the uncertain role of some sort of CE, when judged honestly by our 'Western' standards:

5.b [TK and CE: the case of New Zealand's Maori; card-Lai (2012)]

"On 2 July 2011, the Waitangi Tribunal delivered the Wai 262 report to the New Zealand government ... making recommendations as to the place of Maori culture in New Zealand. ... The report has the potential to change how Maori cultural heritage is used in the future, including with regard to research practices, trade and intellectual property rights. This paper analyses the recommendations made over traditional cultural expressions, including fixed and non-fixed forms (*taonga* [treasures] works), the related traditional knowledge (*matauranga Maori*) and hybrid use of Maori motifs.
...
The Maori version of which [the Treaty of Waitangi, Treaty of Waitangi Act 1975 (NZ)] guarantees *tino rangatiratanga* (the unqualified exercise of chieftainship) over their lands, villages, and all their property and *taonga*. The concept of *tino rangatiratanga* is not en par with the Western concept of property, i.e. of esclusive ownership, rather, it is often considered to refer to autonomy, self-governance or authority, even self-determination, in the contest of the Treaty. *Taonga* is wide in meaning and includes material ad non material heirlooms and sacred places, ancestral lore and generalogies (*whakapapa).* Thus, it encompasses *matauranga Maori* (and, thus, TK and TCE).
...
A core principle of *tikanga Maori* (Maori customary law) is that of people, lands, villages and *taonga*. It is an obligation that arises from their kin relationship, not only to people, but also to things that are believed to have a kin relationship according to Maori myths, legends and belief systems. It can, thus, encompass land, water, plants, wildlife ad cultural works; and also intangible things such as language, identity, culture and *matauranga Maori.* This obligation includes the care of both the physical and spiritual, requiring the nurturing of *mauri* (the life force).
...
The *matauranga Maori* the claimants sought to protect was the information, ideas and intangible concepts underling *taonga* and *taonga*-derived works. The Tribunal declined to define protectable *matauranga Maori*, stating it is as being as difficult to define as 'Western knowledge'. However, it noted that 'it is the proximity of the matauranga and the community that is the core defining factor, not the broad category of *matauranga Maori* itself'. There exists generalised *matauranga Maori* that is significant to all Maori and has no particular *kaitiaki* [guardian]. There is also 'closed held' *matauranga Maori that is* specific to particular communities (such as a particular *iwi* or *hapu*) and does not have *kaitiaki.*

Whether there is a living *kaitiaki* or not, the Tribunal found that *matauranga Maori* cannot be only exclusively possessed because much of it is in the public domain, regardless of whether this was consensual or not. ... Of course that which is not in the public domain may be kept so. Nevertheless, it was concluded that all *matauranga Maori* should also be afforded protection from offensive or derogatory public use. Furthermore, if a *kaitiaki* can be identified, he/she should have rights to be involved in consultation and decisions over the use of the *matauranga* in commercial endeavours."

Lai (2012), passim
www.unilu.ch/files/i-call_working_paper_2012_02_jcl_wai-262_and_tces.pdf

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Would you be interested in fighting for the 'unqualified exercise of chieftainship' of any community on 'water, plants and wildlife'? (just only remember that, for instance, 'plants' as such cannot be patented, and so they cannot become 'property' of any one)

Next card concerns a very unusual (at least for us) phenomenon, the **'release of captive wildlife'**, where a misjudged feeling of culpability towards wild animal populations leads to potential, major ecological disasters.

5.b [TK and CE: the case of releasing captive wildlife; card-SCB (2013)]

"Society for Conservation Biology: Position on religious practice of releasing captive wildlife for merit:

Religious institutions have already begun to show notable interest in and to take action toward reversing the environmental crisis in general and halting the loss of biodiversity in particular. Amidst these endeavours by religious institutions however, we call for a holistic reappraisal of practices within their fold to address any that might impede global progress to save biodiversity. For example, a practice by Buddhists and Daoists that raises concern is *fang sheng* – the Chinese term for the act of releasing captive wildlife as an act of compassion. The manner in which 'animal release' is practiced raises concern for biodiversity that conflicts with the ritual's aim of compassion. 'Animal release' causes several adverse effects on biodiversity including the spread of invasive species, genetic swamping, extreme animal suffering, competition, vulnerability to predation, disease, and human health concerns. ... The RCRC recommends a targeted awareness campaign that emphasizes the problems associated with 'animal release' and the most pragmatic alternative practices that maintain both spiritual and ecological integrity. ...

The Religion and Conservation Research Collaborative (RCRC) of the Religion and Conservation Biology Working Group (RCBWG), Society for Conservation Biology (SCB) concludes that practices of animal release (*fang sheng* in Chinese, *hojo-e* in Japanese, and *tshe thar* in Tibetan) by Buddhists, Daoists, and other religions are detrimental to biodiversity and are causing increasing concern. For example, some Buddhists practice *fang sheng* by releasing captive wildlife as a demonstration of compassion and kindness. This practice occurs throughout Asia (e.g., in Taiwan, Sri Lanka, Thailand, Japan, Korea, Singapore, Cambodia, China, Vietnam, Hong Kong, Tibetan Autonomous Region, and Malaysia) and, in recent decades, in western countries (e.g., Canada, Australia, and the USA). The motivation behind the practice has several dimensions. ... The Buddhist China Preserve Life Association asserts that it released more than 20 million animals in 2008 during 300 ceremonies, the vast majority of which were small aquatic creatures.

Religious groups in Taiwan spend more than US $6.19 million annually to engage in 'animal release' rituals which, according to the Environment and Animal Society of Taiwan (EAST), is practiced 750 times on average each year. EAST further estimates that more than 200 million animals are included annually in 'animal release' rituals in Taiwan.

Knowing that many religious adherents are unaware of the adverse effects of 'animal release' on biodiversity, the RCRC takes this opportunity to identify the associated problems, declare our position as a body of concerned professionals and suggest appropriate alternative practices based on consultations with religious adherents, conservation scientists, and literature reviews, that will support both spiritual and ecological integrity."

SCB (2013), passim
www.conbio.org/images/content_groups/Religion/RCRC-Mercy-Position-Statement-Final-Draft.pdf

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It is clear from this document that the Society for Conservative Biology is very prudent while tackling a problem whose religious and emotional foundations demand 'information' more than 'condemnation'; they will never call 'superstition' a behaviour that finds its roots, for instance, in the traditional Buddhist 'benevolence' towards living beings. They will instead explore "the most pragmatic alternative practices that maintain both spiritual and ecological integrity", even if these 'pragmatic alternatives' do not seem to have been explicitly defined.

What should be the status of 'animal release' in the Maze? Labelled as 'superstitious TK'? 'ecological crime'? Could you ever have the courage to fight for the 'respect, protection and promotion' of this kind of practice?

But, according to UNESCO (2003), this silly behaviour is surely part of the 'intangible cultural patrimony' of humanity!

The following thoughtful reflexions by Rahmatian sound as a refreshing oasis where a calm, uncertain, exploring wandering in a hard to interpret landscape helps us to think; we do not necessarily agree with the whole Rahmatian analysis, but we are sure that many reflexions of this type and of this depth are urgently needed to fill the Maze:

5.b [TK and CE: a critical approach; card-Rahmatian (2007)]

"If something is protected as a tradition, then that hinders the development of modern art, which later normally becomes part of a cultural tradition, and this phenomenon is by no means confined to the West. The term 'protection of traditional cultural expressions' is actually a misnomer: in fact, the expressions, once normatively recognised by way of their legal protection, make the tradition they purport to express. They are the cause, not the effect, of the tradition. What would later be termed tradition, is typically not created or maintained by (self)appointed 'native' guardians of that tradition, but by potentially everyone, irrespective of his/her ethnic affiliation, who does not shy away from unusual combinations of different cultures, eclecticism and outright challenge of the custom of his/her time. (p.199)

What is referred to in the present context as 'Traditional Cultural Expressions', is what one could loosely describe as traditional art in a broad sense, including music, dance, any kind of visual art, any kind of literature, whether oral or written, and any combination of all these, and all these being created individually or collectively, or handed down in a spiritual, communal or other cultural context or for such purposes. It is what Westerners would perhaps most readily associate with the concept of copyright, unsuitable as that may be for possible protection. The term 'folklore' is vague and of little assistance. The classification of traditional knowledge in this way is highly problematic, in that it is 'Western', where the established intellectual property categories shine through, and it is academic and theoretical, but so is the whole idea of protection of traditional cultural expressions, thus the artificiality of this approach vis-à-vis non-Western cultures is inescapable. One should not forget that, for example, the seemingly simple and ordinary art category of 'music' does not as such exist in sub-Saharan African musical cultures; the rough equivalents of 'music' are complex performance phenomena, which Westerners would describe as a music/dance/movement combination (for example, in Kiswahili termed '*ngoma*'), but also as celebration, feast, theatre (play), song and the like. ... In addition, it is not only that Western terminologies do not necessarily have an equivalent; the very languages face fundamental distortions of semantic and cultural meaning in the translation process – typically into English, through which a concept or idea becomes an anglicised ready-made, detached from its cultural context. ...

I also seek to move the interest in the protection of traditional cultural expressions away from the focus on a few non-Western cultures and try to incorporate Western, especially European, cultures into the discussion, which renders the problem less remote and highlights the controversial aspects far better. There is no reason why the Western world should not be subjected to the same methods of scrutiny and critique as the non-Western world. By connecting the problem of traditional cultural expressions with European cultures and by removing the connotation of apparent 'otherness' from it, the dubiousness of many presuppositions of the discussion in this area, which are often taken for granted, becomes more obvious. (p.201)

Rahmatian (2007), passim

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add 5.b WIPO (2014b)
WIPO (2014c)
WIPO (2014d)
WIPO (2014e)
WIPO (2014f)

Section 5.c - Does/should/could GRTKF embed Rituals (R)?

Can we say, by copying a famous introductory sentence, that "A spectre is haunting Europe — the spectre of 'Rituals' "?; perhaps not Europe, but only the corridors of WIPO in Geneva? and the Maze?

In a rather favourable analysis of TK, Correa quotes 'rituals' at least four times, as - to Correa, it seems - obvious, not objectionable components of TK:

"TK includes, for example, information on the use of biological and other materials for medical treatment and agriculture, production processes, designs, literature, music, **rituals**, and other techniques and arts. ...

TK may be possessed by individuals (e.g. healing practices and **rituals**), by some members of a group, or be available to all the members of a group ('common knowledge'), for example with knowledge on herbal-home remedies which is held by millions of women and elders. ...

However, there might be cases (for instance, in the area of TMK) where the control of knowledge (often on the basis of **rituals**) through IPRs would be acceptable and desirable for the possessors of TK. ...

The context of TK varies significantly and its forms of expression. Some TK is codified, that is, formalised in some way (eg textile designs, ayurveda traditional medicine). A great part of TK, however, is non-codified or tacit, such as, 'folk', 'tribal' or 'indigenous' medicine, which is based on traditional beliefs, norms and practices accumulated during centuries old experiences of trial and error, successes and failures at the household level, and passed to successive generations through oral tradition. TK may be possessed by individuals (eg healing practices and **rituals**), by some members of a group, or be available to all the members of a group ('common knowledge'), for example with knowledge on herbal-home remedies which is held by millions of women and elders."

while, at the same time, pleading for 'protection' of TK:

"The main arguments for granting protection to TK include:
• equity considerations, • conservation concerns,
• the preservation of traditional practices and culture,
• the prevention of appropriation by unauthorised parties of components of TK, and • promotion of its use and its importance in development".
Correa (2001), passim

We do not know what Correa would think, and write about, news as the following, regarding **rituals**:

"South African traditional healers or “sangomas” on Thursday welcomed a watershed court ruling that legally recognises their patient sick notes. The Supreme Court of Appeal recently upheld a verdict that a Pretoria firm wrongfully sacked a chef who took five weeks leave to deal with her tormenting ancestors."
AFP (2013)

or:

"During important events or visits, chicken is slaughtered and intestines removed carefully by men. The chicken is then given to women to cook. Once it is ready, it is emptied into a ceramic container called 'yambobu' and then served to the visitors by the head of the homestead. A woman is not even allowed to touch the 'yambobu'. Women visitors are not served chicken, instead they are served beef or fish. ... The following beliefs are associated with chicken:
• Pregnant women were not allowed to eat eggs because they would have problems during child birth
• Imondo (gizzard) and isundi was only eaten by elderly men. If women ate khasundi or imondo this was considered disrespectful to their men
• A cock fight or isuyi fight is an indication that a visitor is coming to the home. The kids would watch the cock fight and would shout 'bacheni bitsanga' meaning 'visitors are coming'
• It is believed that when one shares the gizzard with someone else, they become enemies for the rest of their lives.
Chicken is also used in sacrificial ceremonies in traditional sacred sites where ancestral God (Nyasae-Isukha and Maragoli) is believed to live. It is often sacrificed at an old kitchen (kitchen of an old homestead where older parents lived long time ago). In such sites, the three cooking stones (amaika) or cereal grinding stones are found. It is difficult to find such sites nowadays due to modernity and particularly Christianity. During such events, chickens are slaughtered at the entry of the kitchen and blood is poured around the stones while praying to the ancestral God. Desecration of these sacred places will attract a fine in form of a livestock (e.g. a goat and chicken). This is still practiced to date."
UNESCO (2013a)

To us, and we hope for our Maze fellow-travellers too, the prospect of an official, reverent, a-critical entrance of 'rituals' in the GRTKF space would coincide with the danger of immersion of our Maze into a dense and obscure cloud, where all traces of a rational, intelligent selection between 'knowledge-opinion-hypothesis ...' and 'prejudice-trash, ..." are lost. Once GRTKFCER is officialised, what could we still be allowed to say about, for instance, items of the sort presented in next card?

5.c [indigenous TK and rituals; card-healing]

"Healing is a process of restoring and sustaining wellness. In indigenous African systems of thought, healing entails harnessing and controlling pervasive power in the universe to remedy sickness and misfortune. Folk health specialists focus on the maintenance of balance among elements in the universe that they believe influence human vitality. Afflicted people and their social groups participate in therapeutic events to restore order, strengthen health, and eliminate illness. Indigenous African cultures construe healing as a comprehensive quest for health that includes the use of tangible medicines and ritual, either concurrently of sequentially. This process seeks to establish health and growth on physical, psychological, social and spiritual levels. It involves work on the individual, the group, the surrounding environment, and the cosmos. Ultimate restoration of wellness depends on individual or communal success in harnessing the power that permeate different elements of the universe in order to deal with disease, social disharmony, and other forms of human affliction. ... Ancestors are responsible for blessings, such as fecundity, wealth, and all aspects that define good health. But they may also be authors of accidents, calamities, and ill health when human being do not placate them and fail in their moral obligations. ... Healers often prescribe propitiation or exorcizing the spiritual beings they associate with ill health. In addition, diviners or healers have to explain the causality of the illness further to illustrate why it happened. They draw on some visible and objective happening to advance diagnostic descriptions. On occasion, divination attributes sickness or misfortune to hatred, jealousies, misdeed, and disrupted relationships. This may be how mystical powers of the machinations of witchcraft and evil spirits cause sickness or suffering. Sicknesses not only disrupt biological or physiological being, but also symbolize emotional, social, and spiritual imbalances. Therefore, holistic healing incorporates attempts to repair three levels of relationships sequentially, concurrently, or alternately."

Mulemi (2010)

"All African religious systems include provision for the direct human experience of spiritual power through possession. People everywhere can experience varieties of altered states of consciousness, real and measurable physiological states brought on by a variety of factors, froma violent blow to mental disorder to ingestion of drugs to personal concentration. Certain of these states become structurally standardized, explained as possession by particular spirits. In such a state, the individual's own soul and personality are suppressed, and he or she is controlled by the spirit."

Stevens (2010b)

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or about this piece of very modern Indian ritual propaganda?

"Vedi ritual to reduce pollution: An age old ritual from the Vedas can reduce atmospheric pollution, boost agricultural produce and also heal physical ailments, according to the Institute of Vedic Sciences based at Shivpuri Akkalkot in Solapur district of Maharashtra. The ritual, called 'Agnihotra', is a simple process and can be practiced by anybody.
Sex or religion is no bar and this is seen as a step towards promoting greater national integration. Just at the crack of dawn or at sunset, burning a few cow-dung cakes in a copper pot with two pinches of rice grains smeared in ghee added as oblation and chanting two simple lines of mantra, is all that is required for 'Agnihotra'. But the benefits, the Institute people proclaims, are several. The air around is purified, the mind elevated and cleared of all tensions and body functions improved. There is nothing occult about the ritual, the Institute says. The ingredients that go into it, including the exact sunset and sunrise timings, all combine to release energies which are of a purifying nature." MLBD (1994) (a useful - if witness of a tragic situation in Maharashtra - complement to this 'trash', has to be found and studied in Maharashtra (2013))

Once the Maze becomes GRTKFCER, you will find there 'tout et n'importe quoi = trash'.

But, of course, we do not imagine that all trash will come from 'They'! 'We' have abundant 'trash' to sell and distribute and share with everybody around (without, perhaps, the arrogance of asking for some sort of IPRs or '*sui generis* respect, protection and promotion' for it):

- Swiss catholic people asking the Pope for the most efficient prayer to stop the melting of glaciers,
- everybody in Europe finding horoscopes, supposed to guide their daily choices, in their morning newspapers and on their TV programs,
- every child and pupil in Europe being, early in their life, exposed to patriotic songs, respect for the country's flag, admiration for those poor young people who were killed by their country, but are defined by their tomb-stones as the heroes that 'died for their country', ...
- ...

We should be ashamed of 'our' trash; but should we on the contrary, if we obey WIPO, be in a blind - if hypocritical - admiration for 'Their' trash?

We do not want to imply that, for us, all rituals are 'trash' and, what is worse, 'dangerous trash'.

Respect for, adherence to, repetition of 'Rituals' so often imply respect for 'symbols'; adherence to a 'symbolic frame' often inherited from childhood; repetition of a 'symbolic activity'. And we are aware that for so many people (be them 'We' or 'They') the presence of some sort of 'symbols' in their daily life provides a structuring life-frame.

We can however only naively believe that this complex social participation to a ritual is always a sign of personal, free and independent choice (just, please, think of the (surprising?) fact that people born into a

'Christian' country are Christians, while those born into a 'Muslin' country are Muslins). 'Rituals' engender dependence, they do not foster individual independence. Take this clear example of individual slavery engendered by a very particular, if almost universal, 'ritual': Circumcision:

"In Africa, people who evade circumcision when it is mandatory in their cultures are regarded as outcasts and sources of community defilement, and are viewed as unmarriageable; they risk being circumcised by force." Mulemi (2010), p.238

You could feel - as we do - that this dependence is far from being desirable and is even dangerous, so that 'Rituals' should be rather banned than exalted and perhaps even given some '*sui generis*' IPR; but this discussion could take us too far away from - and to a much larger social and political space than - the Maze!

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add 5.c Cabalzar et al (2013)
Lessa (2014)
Tavares (2014)
WIPO (2014f)

Chapter 6

HOW AN ANCESTRAL TK COULD HELP


WE ENROLLED HIM IN BRITISH ACCENT IMMERSION SCHOOL SO AT LEAST HE'LL SOUND SMART.
DIST. BY CREATORS SPEEDBUMP.COM ©2010 COVERLY
5-26

Dave Coverly

Chapter 6 - Alternatives to IPRs?

Introduction to Chapter 6

We have seen that, throughout the Maze, the standard 'mantra' is the requirement of 'respect, protection and promotion' of TK (extended, in general, to GRTKF if not to GRTKFCE if not to GRTKFCER if not to ...?)

We have also seen, while crossing a number of items insisting on the need for such a desired set of behaviours, that the concrete, technical demands on 'the powers that be' (local administrations, regions, countries, International Organisations like WIPO, WHO, WTO, ...) are often either obscure and ill defined, or contradictory.

'Respect' and 'promotion' can refer to individual and/or to local initiatives; but 'protection' cannot. And therefore, is the present status of WIPO's and TRIPS' IPRs adequate for such a 'protection'? We have met in the Maze quite a number of arguments against this simple and simplifying solution.

Section - 6.a will deal in details with this realm, loosely defined as 'the search for '*sui generis*' IPRs-rules', as the standard IPRs rules are generally thought to be inadequate. Next card is given here only as an appetizer, just to glean some of the arguments that make the debate on this theme rather intense if sometimes confusing: real or presumed stakeholders demand a lot, but are seldom ready to concede something; they require shared profits for their knowledge, but are wary about allowing full and time-indeterminate access to it:

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6. [doubts on the applicability of IPRs to TK-CE; card-Rao (2009)]

"Traditional knowledge (TK) and traditional cultural expressions (CE) [sometimes TK = CE in the literature, sometimes it seems the authors feel there is some difference in meaning between the two expressions] are important elements of the cultural heritage and social and historical identity of many local and indigenous communities, as well as many nations and regions with a shared cultural history. They are increasingly recognized as key elements of the future well-being and sustainable development; ... TK and CEs are, on the one hand, valuable cultural assets of the communities who maintain, practice and develop them. On the other hand, they are also economic assets as they are creations and innovations that can, if so wished, be traded or licensed for income-generation and economic development. ... It is, however, too often the case that TK and CEs are vulnerable to acts of misappropriation and misuse. Such acts may include the use of traditional medicinal knowledge by scientists and multinational corporations for research, scientific or commercial purposes and the fusion of traditional sounds with modern music rhythms to create best-selling 'world music' albums, with, in either case, no benefits accruing to the communities of origin. ... Many international forums are currently discussing and acting on the enhanced preservation, promotion and protection of TK and CEs. The World Intellectual Property Organization (WIPO) specifically addresses the relationship between intellectual property (IP) and TK and CEs. WIPO's work complements the work of other agencies and organizations, such as the Permanent Forum, the Secretariat of the Convention on Biological Diversity (CBD) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The focus of this paper will, however, mainly be on WIPO's work in this field.

The Use of Intellectual Property to Protect TK and CEs 'Intellectual property' refers to creations and innovations of the human mind, such as inventions, literary and artistic works, and symbols, names, images, and designs. The IP system protects such creations and innovations from unauthorized use, including unauthorized copying, adaptation, commercial use and communication to the public. ...

Traditional forms of creativity and innovation can also be protected to some degree by the conventional IP system, and there is ongoing discussion at WIPO and elsewhere on developing new forms of IP protection for TK and CEs. The IP protection of TK and CEs is also the subject of several practical capacity-building projects being undertaken by WIPO. ... 'Protection' in this context means defending the intangible ('intellectual') components of CEs and TK against some form of unauthorized use by third parties. It is this kind of protection, rather than preservation, which is the general function of the IP system, including in the area of TK and CEs. 'Positive' protection of TK and CEs entails the active exercise of IP rights in TK and CE subject matter. 'Defensive' protection refers to strategies aimed at ensuring that third parties do not gain illegitimate or unfounded IP rights over TK and CE subject matter (for example, patenting an age-old and widely known remedy). IP protection (sometimes referred to as 'legal protection') is therefore distinct from the preservation or safeguarding (sometimes referred to as 'material protection') of TK and CE subject matter."

Rao (2009), passim

But here, in this Introduction to Chapter 6, we would like to pause for a moment, and try and find some order in the mass of items we have being visiting, if only cursorily, in the Maze. But perhaps, 'asking for some order' is too much to ask? Are we sure we know what are we talking about? If either TK, or GRTKF, or other acrostics of this sort, just part only of 'Their' life? what about 'our' life? should we, could we ask for 'respect, protection and promotion' of 'our' TK? could this have any sense in our life?

It could sound silly to say, but we think mostly that we should not so much 'protect' our TK (that undoubtedly exists, even if often hidden in obscure corners of our mind), as on the contrary 'to be protected from, or against' our TK:

Take this yahoo.co.uk presentation screen (morning, Thursday, 21 March, 2013):

four coloured squares with hypertext-links, to allow further exploration:

Chinese horoscopes Your tarot reading

Your 2013 horoscope How to read a horoscope

Practically no one of 'Us', we think, will openly confess to start his/her working day by pressing a link and going to his/her preferred morning 'spiritual' drug; but millions of people in Europe will do.

Were we speaking, on the contrary, of 'Their' morning, we should (as far as we listen with empathy to WIPO's demands) find all of this as a sort of 'folklore', 'cultural expression', even 'ritual', associated to a kind of deep, spiritual world-view to be only appreciated with (at least, apart from protecting and promoting it) respect, sympathy and understanding. Should we, without hypocrisy?

Please, dear readers/perplexed fellow-travellers, accept from your Guide, and only for a limited time, some rambling around, among fragments of 'Our' TK, 'Their' TK, some nonsense TK, some perhaps-nonsense TK, ..., just to demonstrate - as Pascal told us in our quotation in exergue to this Guide - that in the whole space (be it inside the Maze, or outside the Maze) the real possible, understandable order is to be found in the rich confusion of its variegate disorder:

a **- folk remedies:**

bought on a open, dusty market, in the small village of Bonito, Pernambuco (Brasil), july 2012:

- oregan: printed on the small paper bag:

"benefícios à Saúde: alívia dores de cabeça, irritabilidade, sedativo, tosse, gripes, bronquites, catarros, funções gástricas, diarréia. E' usado também em tempero [in a sauce]"

- small bundle of strips of a tree bark (tree not identified); asked man selling it, about its use: "para toda inflamaçâo"

b - traditional Chinese drugs in Canada:

"Au Canada, selon la Loi sur les aliments et drogues, les produits de santé naturels (PSN) sont assujettis au Règlement sur les produits de santé naturels. On entend par PSN : suppléments de vitamines et minéraux; remèdes à base d¹herbes et de plantes; médicaments traditionnels (chinois, ayurvédiques); médicaments homéopathiques; probiotiques; acides gras essentiels et oméga-3; autres produits de consommation courants tels que certains dentifrices, antisudorifiques, shampoings, produits pour le visage et rince-bouches. On retrouve dans la littérature scientifique plusieurs études qui montrent la présence d¹ingrédients dangereux dans certains PSN. La présence de ces composés peut être volontaire ou accidentelle. On rapporte la présence de métaux lourds (plomb, arsenic, mercure), de produits chimiques, de médicaments sous ordonnance (antihistaminiques, anti-inflammatoires, benzodiazépines, hypoglycémiants, anticonvulsivants, dérivés de sildénafil (troubles érectiles), stéroïdes), de drogues d'abus, de plantes toxiques (aconitine), de traces d'ADN d'animaux protégés ou en voie d'extinction, de microorganismes, d'insectes ou de mycotoxines. ... " More on next card:

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6. [traditional Chinese drugs in Canada; card-Chinese drugs (2012)]

"Au Canada, selon la Loi sur les aliments et drogues, les produits de santé naturels (PSN) sont assujettis au Règlement sur les produits de santé naturels. On entend par PSN : suppléments de vitamines et minéraux; remèdes à base d¹herbes et de plantes; médicaments traditionnels (chinois, ayurvédiques); médicaments homéopathiques; probiotiques; acides gras essentiels et oméga-3; autres produits de consommation courants tels que certains dentifrices, antisudorifiques, shampoings, produits pour le visage et rince-bouches. On retrouve dans la littérature scientifique plusieurs études qui montrent la présence d¹ingrédients dangereux dans certains PSN. La présence de ces composés peut être volontaire ou accidentelle. On rapporte la présence de métaux lourds (plomb, arsenic, mercure), de produits chimiques, de médicaments sous ordonnance (antihistaminiques, anti-inflammatoires, benzodiazépines, hypoglycémiants, anticonvulsivants, dérivés de sildénafil (troubles érectiles), stéroïdes), de drogues d'abus, de plantes toxiques (aconitine), de traces d'ADN d'animaux protégés ou en voie d'extinction, de microorganismes, d'insectes ou de mycotoxines. On rapporte également l'apparition d'effets toxiques secondaires à la présence de ces composés: nausées, vomissements, diarrhée, insuffisance rénale, insuffisance hépatique, encéphalopathie, arythmies cardiaques, infarctus du myocarde ... Des analyses en laboratoire ne sont effectuées que s'il y a plusieurs plaintes du public ou s'il y a des rapports de plusieurs effets indésirables. En plus, l¹équipe de toxicologie clinique de l¹Institut national de santé publique du Québec s¹attend à ce que, dans les prochaines années, une plus grande variété de PSN se retrouve sur le marché québécois. ...

Description d'un cas. En juillet 2012, le responsable scientifique en toxicologie clinique de l'Institut national de santé publique du Québec a participé à l¹enregistrement de l'émission 'Une pilule, une petite granule' diffusée le 13 septembre 2012 sur les ondes de Télé-Québec. ... Pendant l¹entrevue, un remède traditionnel chinois a été acheté dans un magasin du quartier chinois de Montréal. Selon l¹étiquette, le produit devait contenir les substances suivantes: Flos Magnoliae (10 %), Fructus Xanthii (10%), Radix Angelicae Dahuricae (10%), Herba gostemonis (10%), Cortex Moutan Radicis (10%), Radix Ledebouriellae (10%), Rhizoma Alpiniae (10%), Cortex Phellodendri (10%), Herba Ecliptae (10%), Radix Astragali Seu Hedysari (10%). L'étiquette ne présente ni numéro de produit naturel (NPN), ni code d'identification numérique (DIN). Aucun numéro d'exemption (NE) n'avait été attribué par Santé Canada lors de l'achat du produit.

Un échantillon du produit a été soumis pour analyse au Laboratoire de toxicologie de l¹Institut national de santé publique du Québec. Les résultats d'analyses confirmés par UPLC-QTOF-MS ont démontré la présence en concentration non négligeable de chlorphéniramine, un antihistaminique de synthèse, dans les comprimés. La possibilité d'une présence de chlorphéniramine d¹origine 'naturelle' a ainsi été exclue. L'ajout de chlorphéniramine de source synthétique au produit est l'hypothèse la plus plausible. Au Québec, la chlorphéniramine est un médicament offert en vente libre pour le traitement des allergies, mais il doit être vendu uniquement en pharmacie."

BIT-Ca (2013)

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c - folk remedies in primary health care (South Korea)

-- treatement for nourishing the body:
young antlers of deer
foxglove (digitale!)
...
-- topics of health knowledge
the bean sprout is good for mental health
milk is good for preventing hypertension
the fermented bean is good for cerebral trombosis
the bean-paste soup guarantees longevity
the potato good for the longevity

Choe Thae Sop (1995a), passim

Perhaps now we as well as our readers/fellow-travellers are ready to go through the amusing set of cards that follow (it is just a way to learn and smile together, not to take things too seriously, keeping always in our mind that the seemingly very serious things we have already found in the Maze own often their apparent seriousness to the liberal use of 'mantras' of undefined meaning):

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6. [no patents for old traditions; card-Pala Durkes (2012)]

" 'Mistu de durkes'
(an assortment of cakes)
Bitti (Sardinia), 2012

One can hardly be astonished to discover that there exists a woman from Bitti [Sardinia] who confections hand-made traditional Sardinian cakes and sweets with an especially zealous eye on the preservation of those techniques inherited from her ancestors, or rather ancestresses. First as a mere child, then as a girl, young bride and as a mother of five, Maurizia Pala has dedicated herself to observing and learning the secrets of that ancestral art.

From the presentation on a box of durkes (dry cakes) from Bitti."

Pala-Durkes (2012)

Where you will find that you could have 'the secrets of an ancestral art' [pastry-making], and at the same time you would not be asking for any '*sui generis*' IPR, but instead engage yourself in the 'preservation of those techniques inherited from your ancestors', and make good money out of your pastry-art and pastry-shop.

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6. [no patents for old traditions; card-UBS (2013)]

"100 traditions et coutumes; La Suisse typique.

Une sélection des 100 événements et découvertes les plus authentiques.

La Suisse est l'un des pays les plus développés au monde. Mais c'est aussi une nation riche en traditions, us et coutumes, remontant souvent à un passé si lointain que leur origine se perd dans l'oubli. Ce qui ne les empêche pas d'être célébrés, honorés et perpétués. Car les gestes d'antan procurent de la joie et fournissent des repères bienvenus à une époque agitée comme la nôtre. ...

Cette brochure ... est l'occasion de vous présenter les 100 lieux et événements les plus fascinants pour aller à la rencontre de la Suisse dans ce qu'elle a de plus authentique et de plus surprenant. A vous de découvrir et savourer ces valeurs authentiquement suisses. ...

Le passé renaît dans nos pittoresques villages de montagne: Le passé se manifeste à chaque pas pour qui se promène dans nos villages de montagne: authentiques et photogéniques, ils témoignent du quotidien de nos aïeux et renferment mille petits trésors d'architecture. ...

Les univers insoupçonnés de nos vallées reculées: Les innombrables vallées de Suisse forment chacune un microcosme à part, avec ses mythes, ses légendes et ses traditions. Et si elles paraissent reculées, elles n'en restent pas moins très accessibles. ...

A la rencontre de nos héros et légendes: Randonner en Suisse, c'est aller à la rencontre non seulement de paysages époustouflants de beauté, mais aussi de l'histoire mouvementée de notre pays. Ecoutez nos sentiers vous raconter la légende des siècles. ...

Soudain, le passé revit: Hornuss, fenaison et charbonnnerie. Ces mots tombés dans l'oubli font encore partie du vocabulaire courant sur les rives du pittoresque lac des Quarte-Cantons. C'est qu'au coeur de la Suisse, modernité et traditions marchent côte à côte. Le visiteur pourra ainsi observer de très anciens savoir-faire, comme le lancer de drapeau, la fabrication des arbalètes ou le fauchage des foins à flanc de la montagne, et même s'y initier si le coeur lui en dit! ...

Drapeaux volants: Soudain, un éclair rouge et blanc fend l'air dans le ciel de Brunnen. Les lanceurs de drapeau sont à pied d'oeuvre. Cette tradition ancestrale, qui remonte aux joutes chevaleresques du Moyen Age, fait aujourd'hui partie de toute fête populaire en Suisse. ...

Betruf à Musenalp: C'est un rituel touchant. Une fois les bêtes rentrées à l'étable, le berger s'empare d'un gros entonnoir en bois ou en métal et s'en sert de porte-voix pour entonner sa prière. Un Ave-Maria adressé aux montagnes et censé éloigner esprits malins et mauvais sort.

UBS (2013), passim

The biggest Swiss bank, UBS, joins forces with the Swiss Tourist Office to glean over 100 old Swiss traditions and customs; there is some 'très ancien savoir-faire', and even a 'tradition ancestrale'! and what to say of the 'innombrables vallées ... avec leurs mythes, leurs légendes, leurs traditions'? 'Car le gestes d'antan procurent de la joie'! Everybody can join and learn how 'lancer le drapeau', how 'faucher des foins à flanc de la montagne', how to peep into a life-style 'dont l'origine se perd dans l'oubli'! No '*sui generis*' respect, protection and promotion of this set of old Swiss *mode de vie* is asked, no jealousy is born against those who are willing to learn and enter the game!

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6. [no patents for old traditions; card-Zbinden (2012)]

"Trente litres de sang de cochon frais, dénichés dans une boucherie de campagne piémontaise, à une trentaine de kilomètres au sud de Turin. Du sang frais battu, à parts égales avec de la couenne, du lard, de la tête de cochon et du poireau, mais aussi de la marjolaine, de la cannelle, du sel et du poivre, le tout pétri et embossé dans du boyau naturel: c'est la recette presque immuable du chantzé (ou chantzet) du Pays-d'Enhaut depuis les siècles des siècles. Le chantzé? Un des vingt-deux produits du patrimoine culinaire helvétique menacés de disparition, labellisés et protégés depuis peu par Slow Food… Une des humbles vedettes du Salon du goût de Turin, aussi, qui vient de fermer ses portes.

Vous avez dit bizarre? Ni plus ni moins, pour ceux qui y ont goûté, que le couscous sénégalais de Fadiouth ou la poutargue de mulet des femmes Imraguen de Mauritanie, le riz bario de Malaisie ou le saumon sauvage irlandais, voire le yaourt au lait de cendre des Pokots (Kenya). Ni plus étrange, sans doute, que les haricots secs (Dörrbohnen) de nos grands-mères alémaniques, le mascarpel du Val Bregaglia, le furmagin da cion du Val Poschiavo, le vacherin fribourgeois au lait cru, le ziger d'alpage ou les prunes des vergers hautes tiges du Jura, parmi les «sentinelles de Slow Food». L'association éponyme s'est donné pour mission de recenser, décrire et attirer l'attention sur des produits et des saveurs menacés de disparition. Ses critères? Allier l'excellence gastronomique, le lien au terroir, le caractère artisanal, la dimension durable et le risque d'extinction. ...

Les communautés indigènes venues de plus de cent pays sont réunies sous cette immense tente par une philosophie commune: la volonté de préserver, au-delà des traditions culinaires elles-mêmes, la biodiversité et un héritage mis à mal par l'agriculture intensive. «La cuisine du Salon du goût est un lieu magique. Je préparais mon chantzé dans un mélange d'odeurs provenant de toutes les régions du monde, le parfum du café sauvage des hauts plateaux éthiopiens, le couscous et les tajines, les ganaches au cèpe, au géranium ou à la truffe d'un incroyable chocolatier, les voix des Japonais venus témoigner de l'après-Fukushima, des apiculteurs de l'île d'Ouessant ou des ostréiculteurs bretons d'huîtres de pleine mer…» Des artisans venus, comme le Vaudois, de tous les continents avec des trésors à défendre et à faire connaître. ...

En cela, Patrick Buchs illustre les notions chères à Carlo Petrini – fondateur voici plus de vingt ans du mouvement Slow Food – de 'bon, propre et juste'. Dans les années nonante, ces pionniers se battaient pour défendre la qualité de l'alimentation. Mais dans un même temps, les espèces animales et végétales étaient en train de disparaître: Nous avons réalisé que beaucoup de produits formidables étaient le fait de tout petits paysans et qu'ils étaient menacés. Il fallait aller au-delà d'une attitude d'enfants gâtés au ventre plein', expliquait en substance l'homme de lettres et humaniste piémontais. On assiste alors aux premiers balbutiements de l'éco-gastronomie. Après la recherche de la qualité et du bon goût, la première prise de conscience des thématiques environnementales et écologiques. La perte de diversité biologique catastrophique subie en une génération ne pouvait plus laisser indifférent. Le Salon du goût de Turin mêle ainsi, à dessein, plaisir et réflexion."

Zbinden (2012)

Here it is not a bureaucratic gigantic Swiss bank that plays on Swiss TK, folklore and cultural expressions to reach people and realize at the same time a bit of propaganda; here we have hundreds of simple people from many different countries 'exchanging' their culinary TK for free! They do not participate in order to sell something, by keeping at the same time some 'secret' for themselves; they participate in order to spread their TK, 'pour recenser, décrire et attirer l'attention sur des produits et des saveurs ménacés de disparition'; is it a new, useful form of 'protection', that of giving out, freely, in order to generalize a TK to a larger public and save it for the future.

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6. [no patents for old traditions; card-l'influence de la lune]

- some un-plausible statements on the influence of the moon on human life:

Fondation Germaine COUSIN-ZERMATTEN, à Saint-Martin VS, CH.

"**Tâches:** Conserver, développer, et promouvoir l'utilisation traditionnelle du patrimoine naturel, son exploitation et sa transformation pour les soins (plantes médicinales), pour l'hygiène (cosmétique) et pour l'alimentation (plantes aromatiques et légumes). Dans cette optique la fondation développera notamment une école de la nature avec pour objets principaux d'étudier les plantes, les arbres, l'eau et les minéraux."

www.moneyhouse.ch/en/u/pub/fondation_germaine_cousin_zermatten_CH-626.7.013.045-1.htm

Présentation du livre: L'influence de la lune au quotidien:

"Pleine lune, nouvelle lune, lune ascendante et descendante, noeuds lunaires, autant de configurations qui influencent notre quotidien, celui des plantes et de nos amies les bêtes. Ce livre nous révèle ce fameux 'moment propice' qu'il est bien utile de connaître dans le domaine de la culture, de l'élevage, des travaux de jardin et pour notre santé."

www.germainecousin.ch/fr/livres.asp#lune_au_quotidien

- some very plausible statements on the influence of the moon on human life:

"Three with the moon and his shadow

With a jar of wine I sit by the flowering trees.
I drink alone, and where are my friends?
Ah, the moon above looks down on me;
I call and lift my cup to his brightness.
And see, there goes my shadow before me.
Hoo! We're a party of three, I say, -
Though the poor moon can't drink,
And my shadow but dances around me,
We're all friends to-night,
The drinker, the moon and the shadow.
Let our revelry be meet for the spring time!

I sing, the wild moon wanders the sky.
I dance, my shadow goes tumbling about.
While we're awake, let us join in carousal;
Only sweet drunkness shall ever part us.
Let us pledge a friendship no mortals know,
And often hail each other at evening
Far across the vast and vaporous space!"

Li Po (T'ang; ~700-~770; trans. Shigeyoshi Obata)

The dream of knowing, understanding, predicting and perhaps influencing those 'moments propices' in our life is clearly old as human society, and much TK and Rituals is associated with this old dream. And the moon, with her fantastic nightly fascination and perennial change, provides the hope of controlling the change in the 'forces of nature'; or, as in the case of its presumed influence on the growth of plants, on the behaviour of animals, on our psychological or even pathological status, the hope of be aware in time of an important external influence on our life. No '*sui generis*' IPRs have ever been asked for this 'traditional knowledge'; perhaps so many milliards people are convinced, more or less, of its validity and efficacy, that it is considered 'previous knowledge' of the whole humanity!

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add Intr.6

Section 6.a - **'sui generis' IPRs**

The so often invoked need for the definition of (or for an international agreement on the definition of) a '*sui generis*' norm, that could allow for the extension of the IPRs to a larger domain of application (including GRTKF knowledge and practices), is not a novelty. If we enlarge the definition of the Maze, from the strict domain of GRTKF to include also the whole of the activities, conventions, literature, ... relative to IPRs, we find that that need has been felt and strongly affirmed already in the realm controlled by the UPOV (born 1972).

The International Union for the Protection of New Varieties of Plants (UPOV) is the international organization which deals with the problems related to the protection of intellectual property (patents and author's rights) in the field of the creation of new varieties of plants (see UPOV (1991) for the international convention establishing UPOV as a United Nation organisation).

"It must be borne in mind that States have the right to set the limits of patentability. For example, UPOV (1991) foresees that: 'Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use'. ...
Medical tradition is supposed to contain or at least suggest a controllable and useful use of, in therapeutic terms, some plants or animal or even mineral parts. It can thus be seen that the stakes between the 'patentability of laboratory discoveries' versus the 'non-patentability of public knowledge' becomes a major concern for the local populations who want to avoid that their traditional medicines are pirated by pharmaceutical corporations and that consequently their use is blocked by patent.
This is due in particular to the demands contained in the International Conventions for the protection of new varieties of plants ... . These demands raise numerous questions and cause some perplexity in the practical field (like the protection of agricultural traditions, especially in the DCs) and in the ethical field as well (with respect to the patentability of living species; the [Swiss] Federal Commission of Ethics for genetic engineering in the non human field dedicated a 'Contribution to the discussion' in 2001'.
The essential problem lies in the argumentation in favour of the possibility or impossibility of patenting living matter, at least in some well defined situations. This dialectics was caused by the ambiguities of the TRIPS Agreement and by the divergent interpretations which can be given on the relevant articles of the Agreement.
WIPO and the TRIPS Council - Article 27.3 b) - states that: 'Members may also exclude from patentability: ... b. plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective '*sui generis*' system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement'. "
Briand et al (2010), Chapter 3: International Union for the Protection of New Varieties of Plants (UPOV), passim

(essential reading on this field is Tansey et al (2008))

The dilemma is clear:

- a 'plant', as defined by its family, genus and species, is 'an object of nature'; it can be 'discovered' (in the jungle, in a desert, ...), but it cannot be 'invented' (in a botanical laboratory, for instance); therefore, according to the international laws on patents (see Section 1.a), it cannot be patented;

- a 'new variety of a plant' can also be discovered (in an ecosystem never explored before, for instance) and, in that case, cannot be patented; but it can also be 'produced', and therefore 'invented', in a botanical or in a genetic laboratory, by an 'essentially biological process'.

Which is then the status, as for patentability, of these 'new varieties'? there is no clear cut (legal, logical, straightforward) answer; most will depend on the magical powers of those who have the hard task to 'interpret' the law; but the intense UPOV lobbying has produced a number of bona fide, if '*sui generis*', patents for such new varieties.

As defined by UPOV, a workable '*sui generis*' IPR would: "...provide and promote an effective system of plant varieties protection with the aim of encouraging the development of new varieties of plants for the benefit of society" (UPOV, 2002, 2005)

where evidently 'the protection of plant varieties' coincides with 'the protection of the interests of the producers of plant varieties', and - by definition - 'the benefit of the producers of plant varieties' coincides with 'the benefit of society' .

This compromise about the extension of the definition of a 'patent' to a UPON style set of well defined, internationally accepted, '*sui generis*' patents (depending on specific requirements on origin, originality, genetic difference, physiological behaviour, and so on) describes a landscape largely different from that so slowly and painfully emerging from the decade or longer discussions during the GRTKF meetings. And polemics and discussions (and meetings, ...) are still going on, as you can appreciate from this 2014 information from IP-Watch:

"Thirty-two farmer, breeder and environmental organisations from 26 countries gathered by the “no-patents-on-seeds” alliance today filed an opposition against a patent on an insect-resistant sweet pepper at the European Patent Office in Munich.



According to the complainants, the feature was copied from wild Jamaican pepper. The patent granted to Swiss agri-business company Syngenta by the EPO in 2013 contradicted a resolution of the European Parliament from 2012

that called on the EPO “to exclude from patenting products derived from conventional breeding and all conventional breeding methods,” they argued. Patent applications must meet minimum standards for an innovation. Celebrating the largest-ever group jointly filing such an objection, the organisations invited EPO staff and public to get some hot pepper soup in front of the EPO building in Munich.
Staff of the patent office were cautious to accept the invitations, according to the organisers. The objection will take years to be decided, allowing Syngenta to exploit the patent until an eventual revocation. Final decisions on earlier objections on tomatoes and broccoli patents have been pending for a decade."
Ermert (2014)

By following the continuously changing set of norms, of conditions, of requirements, ... periodically proposed for the definition of some sort of consensual '*sui generis*' IPRs in the Maze, we have been impressed by the following strange consideration:

Analysing the demands that future, potential stakeholders are making, concerning possible '*sui gerneris*' IPRs, we discover a well defined pattern:

- the best definition of the future '*sui generis*' IPRs will be reached when the stakeholders will have decided to accept:

-- not only, and not so much, the privileges they are asking for the TK they are willing to offer,

-- but also, and principally, an international agreement on the elements of the TK they have to offer and that will not have to be compulsorily disclosed.

A few 'supporting pieces of evidence' for this, perhaps surprising, statement:

There are two domains where the customary criteria of 'Western' IPRs seem to contradict the feelings and hopes that several TK stakeholders would like to find in any '*sui generis*' IPRs future settlement:

- duration of the protection, extended in future '*sui generis*' IPRs ('unending privilege'):

- "The Annex to this document comprises document WIPO/GRTKF/IC/8/11 ('Disclosure of Origin or Source of Genetic Resources and Associated Traditional Knowledge in Patent Applications'), originally submitted by the European Community and its Member States.
International debates in recent years have focussed on how to give greater protection to local communities’ knowledge and biological resources, while also allowing for some commercial exploitation to their benefit and that of the rest of the world. Patents have been seen as inappropriate because they require making secrets public and give only 20 years protection – not very comforting for societies whose practices reach back hundreds of years."
New et al (2011)

- possibility of keeping hidden some of the data (TK secrets, sacred use, etc.) associated with the TK on which protection is demanded, by a suitable sort of '*sui generis*' IPRs (no mandatory, full disclosure):

"In some cases, traditional knowledge, including healing practices and materials, are deliberately kept secret by the few individuals in the community privy to the knowledge. Often the knowledge is kept secret because of the place it holds in cultural concepts and practices - such as rituals and magic.
However, there are cases in which TMK is and has always been kept secret. In specialized areas, such as knowledge dealt with by bone-setters, midwives or traditional birth attendants and herbalists, including knowledge of healing techniques and properties of plants and animal substances, access is restricted to certain classes of people. In Kenya, for instance, a study on herbal medicine showed that most of the herbalists interviewed maintained the secrecy of their knowledge."
Correa (2002), p.19

[see also:

"Trade secret law, like other forms of IP, is governed by national legal systems. However, international standards for protecting secrets (called 'undisclosed information') were established as part of the TRIPS Agreement in 1995. Article 39 of the agreement provides that member states shall protect 'undisclosed information' against unauthorized use 'in a manner contrary to honest commercial practices' ... The information must not be generally known or readily accessible, must have value because it is secret, and must be the subject of 'reasonable steps to keep it secret' ."
Pooley (2013)

"On the main outcome of the TK and TCE sessions, IGC Vice-Chair Alexandra Grazioli of Switzerland said that significant advances have been made on both texts, but the main result is the introduction of a gradual approach in the scope of protection of the instruments. Negotiators came to the conclusion that different types of TK or TCEs cannot be covered in the same way, so they created three categories. For instance, secret or sacred knowledge should have one type of protection, widely diffused knowledge another."
Saez (2014b)]

The ensemble of these doubts has been summarised, for instance, by Downer et al (2002). They boil down to:

- traditional knowledge holders cannot seek protection for their goods because often the originators engage in a collective creative process; a notion unrecognized by patent law, that rewards individuals for creating a novel innovation to a particular product or process at a specific point in time;

- TK inventions conventionally have their roots deeply embedded in their past; a temporal reality not acknowledged by present patent law.

There seem to be some benevolence, in the Maze, toward the expression of this need to 'be local', in the sense that no '*sui generis*' IPRs system can be as universal as the traditional, 'Western' IPRs system, but should on the contrary take into account some local, geographic and environmental

peculiarities. You can feel it expressed in several quite different forum and panels, as for instance during a CDIP (Committee on development and intellectual property, a WIPO group) meeting, while referring to a UN report:

"In 2005, the UN Millennium Project, which had been commissioned by the UN Secretary-General to recommend a concrete action plan to achieve the MDGs [Millennium Development Goals], highlighted seven major intervention areas for meeting the MDGs, including one devoted to science, technology, and innovation. Highlighting the cross-cutting nature of innovation, which can contribute to fighting diseases, raising crop production, mobilizing new sources of energy, disseminating information, among others, the report noted that 'meeting the Goals requires a special global effort to build scientific and technological capacities in the poorest countries—and to direct research and development toward specific challenges facing the poor.' With respect to intellectual property rights, the repor t stated that 'Intellectual property laws require a very delicate balance of market forces and public action—a balance unlikely to be the same for all countries' and called for IP norms to take into account the 'levels of development and varying interests and priorities ' ".
WIPO-CDIP (2010)

Quite recently (GRTKF ic meeting 25, July 2013) the debate continued, but no conclusion was reached:

"A number of developed and developing countries said a critical issue blocking progress in the GR discussions is in relation to the mechanism requiring disclosure of origin of genetic material. On this subject, Australia noted that 'many arguments against disclosure reflect a dated position not based on what is on the table, an administrative approach not based on substantive examination.'
The EU said the disclosure requirement would create legal uncertainty and there is still disagreement whether disclosure should be included in the instrument or not. The EU also said that it was important on TK and TCE to make sure material to be protected was not already in the public domain. This concern was shared by several developed countries, such as the US. Developing countries are strong proponents of mandatory disclosure.
The indigenous community called for the committee to take into account other international instruments, in particular human rights laws. The representative of the Tulalip Tribes said the public domain is a copyright concept."
Saez (2013), p.2 [the whole session has been carefully followed by Catherine Saez, see also **Saez (2013a) and (2013b)**]

We find that the (more or less explicit) demand for 'no full disclosure' as a requisite for TK stakeholders to accept some sort of *'sui generis'* IPRs system, creates a definitely negative reaction among SDDCountries, as expressed, for instance during the 20th GRTKF-ic meeting, by the delegate that represented the EU and its Member states:

"A binding disclosure requirement that should be applied to all patent applications

In the 2002 Communication to the TRIPs Council, the EC [European Community] and its Member States expressed their preference for a requirement that should be applied to all patent applications. The EC and its Member States

also consider that the disclosure obligation should be mandatory. This implies that the disclosure requirement should be implemented in a legally binding and universal manner. A global and compulsory system creates a level playing field for industry and the commercial exploitation of patents, and also facilitates the possibilities under Article 15(7) of the CBD for the sharing of the benefits arising from the use of genetic resources.
...
Disclosure of associated traditional knowledge

In this specific case, there are good reasons for an obligation to disclose that an invention is directly based on traditional knowledge associated with the use of genetic resources. According to Article 8 (j) of the CBD, there is a commitment to respect, preserve and maintain traditional knowledge. Traditional knowledge is of intangible nature and the obligation to disclose cannot be based on physical access. It could therefore be proposed that the applicant should declare the specific source of traditional knowledge that is associated with genetic resources, if he is aware that the invention is directly based on such traditional knowledge. In this context, the European Community and its Member States refer to Article 8 (j) of the CBD where the notion 'knowledge, innovations and practices' is used. However, there are concerns about the possibly unclear scope of the term 'traditional knowledge'. In order to achieve the necessary legal certainty, a further in-depth discussion of the concept of TK is necessary".
WIPO-Report-ic-20-inf-8, 2011

[it is a pathetic sign of the inefficiency of this series of general ic meetings the constatation that the European Community and its Member States had already expressed the same concern, by using identical words, six years before:

"In this context, the European Community and its Member States refer to Article 8 (j) of the CBD where the notion 'knowledge, innovations and practices' is used. However, there are concerns about the possibly unclear scope of the term 'traditional knowledge'. In order to achieve the necessary legal certainty, a further in-depth discussion of the concept of TK is necessary".
WIPO-Report-ic-8-11, 2005, p.3

clearly, no one was listening or reading!]

(Please take note: among the thousand pages that float around into the Maze, among the million words that have been said, and sometimes listened to, during the GRTKF Meetings, this is the only sentence we have found were the basic query has been asked - but has never been discussed and even less answered!:

"However, there are concerns about the possibly unclear scope of the term 'traditional knowledge'. In order to achieve the necessary legal certainty, a further in-depth discussion of the concept of TK is necessary"

this could have been the welcomed, long time expected moment for 'the King is naked!' exclamation about the whose GRTKF program; which representative of which country or set of countries had the courage to scream? no one!)

while even the IFPMA [International Federation Pharmaceutical Manufacturers & Switzerland Associations, Geneva] felt it necessary to ask for some qualification on TK:

Supporting and wishing to participate in the development of a regime on Access and Benefit Sharing (ABS), which would facilitate the sustainable use of genetic resources (GR) **and, once clearly defined, associated traditional knowledge (TK)** [our emphasis] and regulate the rights and responsibilities of users and providers of such resources in a transparent way, taking into account related discussions and outcomes from other relevant international fora ..."
IFPMA (w.d.)

Even in this state of doubt and tensions about the very possibility of defining a **general paradigm** for '*sui generis*' IPRs, a few stubborn voices can still be heard:

[about the implementation of the UN biodiversity convention] "Future work proposed for customary sustainable use, '*sui generis*' systems and community-based information and monotoring systems."
UNEP (2013)

Next two cards will add to the arguments in favour of a '*sui generis*' settlement of the issue, but with no clear cut paradigm on what and how such a system should be:

6.a [TK and IPRs - sui-generis IPRs; card-'sui generis']

"Regarding the protection of traditional knowledge through the intellectual property system, there is a general consensus between Ecuadorian indigenous groups and other forums that the intellectual property system is not adequate to protect traditional knowledge. The current intellectual property system ... is seen as a Western system that does not understand the nature of collective rights of indigenous groups and their concept of communal property. ... Indigenous groups advocate the creation of a '*sui generis*' system since patents, copyrights, certificates of origin, industrial designs, etc. were created to protect individual rights and have only a commercial purpose while traditional knowledge has a collective character and not an exclusive commercial purpose." (p.232)

Almeida (1997), passim

- "While acknowledging the general difficulties with protecting traditional knowledge under intellectual property law, the IGC has centred its activities mainly on solutions that tend to minimize the rigors of intellectual property criteria, as they relate to only a minor portion of traditional knowledge. ... Despite the clamor by some Member States for a '*sui generis*' form of protection for traditional knowledge that is not necessarily dependent on intellectual property criteria, the IGC is yet to take up the issue in any comprehensive manner. ... In their Proposal, the African Group submitted for possible consideration and adoption by the WTO as an integral part of the TRIPS Agreement, a Decision on Traditional Knowledge which sets forth the terms of a '*sui generis*' form of protection for traditional knowledge."

Kuruk (2004), passim

"Above it was noted that TK and TCEs [Cultural Expression] can be protected by the IP system to some degree. ... Indigenous peoples have started to develop their own IP protocols and consent agreements for managing access to, benefit-sharing and use of their resources and knowledge, which recognize their customary laws and respect their rights and interests. ... For these reasons, it can be seen that indigenous and local communities, as the custodians of their TK and TCEs, are not entirely unfamiliar with the IP system and do derive some benefit from it. Yet, the conventional IP system does not respond fully to all their needs and aspirations. The WIPO IGC is actively exploring new, tailored forms of IP-like protection for TK and TCEs (so-called *'sui generis'* options)."

Rao (2009), passim

"Traditional works are already in the public domain and are now to be plucked from it and become the private property of traditional communities who will be entitled to remuneration for their use forever hereafter. And so it has proved to be. ... Attempting to protect traditional knowledge (TK) in the existing IP statutes has been akin to driving a square peg into a round hole. ... There has been a constant refrain if you want to protect TK – it was to be done in a '*sui generis*', or customised piece of legislation designed to take account of the unique and special nature of TK."

Dean (2011), passim

6.a [the 'sui generis' debate at GRTKF meetings; card-WIPO IC-19 (2011)]

"In accordance with the decision of the IGC at its seventh session, IGC 19 was preceded by a half-day panel of presentations, chaired by Mr.Tomas Alarcon, President of Juridical Commission for Self-Development of Andean Indigenous First Peoples (CAPAJ), Tacna, Peru. ... The theme for the panel discussion was 'Making '*Sui Generis*' Protection Work: Best Practices in Community-Led Strategies for the Protection of Traditional Knowledge and Traditional Cultural Expressions'. The panel comprised: Angela R. Riley, Professor of Law, Director of the American Indian Studies Center, University of California, Los Angeles, United States of America. ...

Professor Riley, the keynote speaker, stated that '*sui generis*' systems grew out of societal structure and intergenerational obligations. They had to be flexible and dynamic as well as communal and collective. Furthermore, she distinguished between non-codified '*sui generis*' customary law, codified customary law, statutory law as well as positive law, with the possibility of these being interrelated. Professor Riley referred to a global revolution, linking tangible and intangible property rights to human rights. She referred to property law as a means of protecting both tangible and intangible cultural resources. In this respect, she specifically highlighted Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). She also emphasized the importance of land, which was intertwined with TK, as well as the access to information and legal fora. Three central points were identified. First, situating Indigenous Peoples' TK in a framework with a connection to place as well as intellectual property law. She mentioned the connection to sacred tangible knowledge which facilitated the creation of sacred intangible knowledge. According to her, Indigenous Peoples' rights did not fit neatly into the established international property law. Second, she touched upon discussions of TK protection in community-led examples. This process included appreciating the diversity of the world's indigenous groups, employing new models of consultation and collaboration, and tailoring rights and remedies. Regarding new models of consultation and collaboration, she presented examples, such as the *Hopi* Cultural Preservation Office's Protocol for Research, Publication and Recordings. Concerning tailoring rights and remedies, she referred to '*sui generis*' trademark protection. She also stressed the existence of regional laws, such as the Pacific Model Law. Third, she referred to future ongoing issues of concern and research emphasizing the following crucial areas for future research: ensuring rights to land and resources, reconciling Indigenous peoplehood in a world of nation-states, and contemplating the proper relationship with existing intellectual property regimes. In conclusion, Professor Riley highlighted that intangible resources were the heart and soul of Indigenous peoples; they would continue to be exploited if left unprotected."

WIPO-Report-ic-19, Geneva, July 2011, passim

Our wary readers/fellow-travellers will perhaps enjoy a longer exploration of the dense and variate '*sui generis*' subspace of the Maze; every contribution adds a new warning, underlies a new demand, defines a new exigency (it is however much easier to find arguments on 'what we ask for' than on 'what we offer'):

"The approach adopted by the DTI, and regrettably perpetuated by the Portfolio Committee [parliament of the Republic of South Africa], was to take four of the existing Intellectual Property (IP) statutes, namely the Copyright, Designs, Performers Protection, and Trade Marks Acts, and to write into them provisions aimed at granting protection to traditional works akin to the subject matters of the individual statutes. Unfortunately, this approach overlooks a fundamental and very basic principle of each of these acts, namely that they are based on the philosophy that new creative works can be protected for the benefit of their individual originators for a strictly limited period of time subject to the condition that, upon the expiry of the term of protection, they are surrendered to the public at large and become free for use by all. In other words they fall into the public domain. Traditional works, on the other hand, are already in the public domain and are now to be plucked from it and become the private property of traditional communities who will be entitled to remuneration for their use forever hereafter. It is not difficult to realise that a set of rules designed for one situation is not going to be easily applicable to the antithesis of that situation. And so it has proved to be. Attempting to protect traditional knowledge (TK) in the existing IP statutes has been akin to driving a square peg into a round hole. ... There has been a constant refrain if you want to protect TK – it was to be done in a *sui generis*, or customised piece of legislation designed to take account of the unique and special nature of TK."
Dean (2011)

- "While acknowledging the general difficulties with protecting traditional knowledge under intellectual property law, the IGC has centred its activities mainly on solutions that tend to minimize the rigors of intellectual property criteria, as they relate to only a minor portion of traditional knowledge. It has, for example, recommended the creation of databases on traditional knowledge to enable communities to protect their traditional knowledge (defensively) under prior art considerations, and also the use of model contracts governing access to genetic resources and benefit-sharing. Despite the clamor by some Member States for a *sui generis* form of protection for traditional knowledge that is not necessarily dependent on intellectual property criteria, the IGC is yet to take up the issue in any comprehensive manner. In any event, the degree of opposition from major States, evident at the start of WIPO's current initiatives on traditional knowledge and growing increasingly strident, does not appear to offer much hope for the possible use of the IGC forum to create a binding international instrument."
Kuruk (2004), passim

And what about an official WIPOs position on '*sui generis*' IPRs?; up to now, we find none.

At the first session of the intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore (WIPO-Report-ic-19-16 (2001), most of the developing or emerging countries stress the need for '*sui generis*' law system in alternative to IPRs. African countries represented by the Algerian delegation was convinced that

some categories of traditional knowledge could be protected under existing legislation while others not, so that those last should be protected by new adequate *sui generis* mechanisms. The same need for an appropriate '*sui generis*' system was emphasized by Venezuela, Ecuador, Egypt, Brazil, India, South Africa, New Zealand, Peru, Thailand among the representatives of the member states. In contrast, several delegates, mostly representative of the SDDCountries, did not mention the need of, or the interest for, a '*sui generis*' mechanism: Switzerland, United States of America, Republic of Korea, Japan, Norway.

You can usefully refer also to the survey done on the interest expressed by Member states toward the existing forms of intellectual property protection; see for instance WIPO-Report-ic-2-9 (2001).

Twelve years later, at the twenty-fourth session of intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore held in July 2013, only few delegations mentioned the '*sui generis*' mechanism of protection.

What seems to us worth of notice is the fact that both basic WIPO's documents in the field of GRTKF produced up to now (even if not yet 'consolidated' in a definitive form), namely:

– the Common glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions (WIPO-TK-Glossary (2013)), and

- the Consolidated document relating to intellectual property and genetic resources (WIPO-Consolidated-rev.2-8-2-'13),

do not mention the question.

It is hard for us to say what this silence says, or perhaps hides. Perhaps a deeper penetration into the Maze could lead to an answer? Will a new trend, '**branding**', diverge attention from '*sui generis*' IPRs towards a new fad?

"The power of brands
Branding is a never-ending process, but it is of paramount importance to protect brands. It is a 'must' for anyone who creates and wants to protect the value of his or her creation. Some day that creation may become something that many people want and as such may develop into an extremely valuable commercial asset.
'We soon came to realize that these are moments when your brand, your trademark, comes to assist and sustain you. Even when our physical world had been destroyed and our business was in tatters, we still had our brands and the goodwill and reputation we had built up over the years. Although the flood was a major setback, we came to realize that it was simply the case that our activity was temporarily suspended. A catastrophe like this may mean you need to rebuild your production facility, but if you have taken the time to invest in and develop your brands, their commercial value and acquired prestige remain unchanged and, in fact, they enable you to get back on your feet more quickly', he explains. 'Our efforts to expand our product range by launching Maquire also enhanced the possibilities for us to diversify, better manage commercial risks and expand our business', he added.
WIPO's IP and product branding project
The WIPO project seeks to promote the development of local communities and strengthen community and institutional capacity by focusing on the

promotion and strategic use of IP in this area. Three countries – Thailand (Handmade in Thailand: building brands for local communities), Panama (Panama: Three marks for development) and Uganda (Uganda: Branding cotton, sesame and vanilla) were selected as beneficiaries of this project. WIPO is also sharing these experiences with its partners, including KIPO, to optimize the impact of its initiatives."
Jewell (2013a), pp.20-22

Or a possible, perhaps useful answer could also arrive from **irony**?:

"Are Nike, IOC and European football leagues scoring new IPRs at the WIPO?"
Balasubramaniam (2013)

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add 6.a Dauchot (2014)

Section 6.b - Transcending IPRs?

We are not naive enough to believe that we could ever convince either WIPO or the potential future TK stakeholders that the long and fruitful Era of]Copyrights, Trademarks, Industrial Secrets, and so on could approach its end in a reasonable time. We are at the contrary well convinced that:

"It is difficult to get a man understand something, when his salary depends on his not understanding it."
Upton Sinclair (1878-1968): I, candidate for Governor; and how I got licked.

But we would like all the same to point out to our readers and, ever more, to the innumerable potential stakeholders that the GRTKF program has left dreaming, in the indigenous communities and in the local populations, that there are signs '*dans l'air du temps*' that this could be so. And, from our point of view at least, that it is high time that it should be so.

Signs of conflict between IPRs and knowledge? see:

"The Office of the UN High Commissioner for Human Rights (OHCHR) last week [October 2013] held a seminar on the right of everyone to enjoy the benefits of scientific progress and its applications. In some cases, intellectual property rights may not be helping, according to speakers. Following a report made by the United Nations Special Rapporteur in the field of cultural rights to the UN General Assembly in May 2012, the Human Rights Council adopted a resolution requesting that OHCHR convene the seminar. The objectives of 5-6 October seminar held at OHCHR headquarters in Geneva were to provide further clarification of the normative content of this particular right and clarify its relationship with other human rights and fundamental freedoms. The programme encompassed a variety of subjects, such as state obligations; access to information, technology and knowledge; scientific freedom; and the relationship between the right to enjoy the benefits of scientific progress and its application and intellectual property rights.
Farida Shaheed, UN Special Rapporteur in the field of cultural rights, opening the seminar, said the right to share in scientific advancement and its benefits is recognised in Article 27 of the Universal Declaration of Human Rights, and in Article 15(1)(b) of the International Covenant on Economic, Social and Cultural Rights, which recognises the right for everyone to 'enjoy the benefits of scientific progress and its applications.' This right also appears in regional frameworks, she said. Those international norms require a public goods approach to knowledge, innovation and diffusion, she added. Access to science means that the benefits of science must be physically available and economically affordable on a non-discriminatory basis, she said. Affordability may require delinking the costs of research and development from product prices, she said, citing the World Health Organization's Global strategy and plan of action on public health, innovation and intellectual property.
Conflict between Right to Science and IP
Of particular concern is the 'conflict' between the right to science and intellectual property rights, Shaheed said. In her report presented to the 20th session of the Human Right Council, in May 2012, she said the intellectual property regime is a temporary monopoly that 'should be

managed in accordance with a common responsibility to prevent the unacceptable prioritization of profit for some over benefit for all." Flexibilities in the IP system are "important tools to ensure respect for human rights', and need to be explored further and applied more consistently, she said. The report further indicated that 'legal scholars have increasingly questioned the economic effectiveness of intellectual property regimes in promoting scientific and cultural innovation. Scholars have found no evidence to support the assumption that scientific creativity is only galvanized by legal protection or that the short-term costs of limiting dissemination are lower than the long-term gain of additional incentives'. Shadeed said during the seminar that it is worth reconsidering the "current maximalist intellectual property approach' to consider a minimalist approach to IP protection. 'The potential of intellectual property regimes to obstruct new technological solutions to critical human problems such as food, water, health, chemical safety, energy and climate change requires attention', she said. She also warned against the diminishing support of government in research and development, which is increasingly left to private entities. This trend is 'reducing the ability of Governments to identify priority research areas, conduct research and disseminate resultant products', she said in her report. She also advised in her report that 'states request legislative and policy advice from WIPO [World Intellectual Property Organization], including on how to use TRIPS flexibilities to accommodate particular national interests and development needs'. [TRIPS refers to the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights.]

According to Prof. Lea Shaver, associate professor of law and dean's fellow at the Indiana University School of Law, science and technology hold the power to raise standards of living and promote other human rights. However, science and technology are not inherently good, she said, and advance whatever value they are guided by. The vision of science to the service of humanity is threatened by science in the service of profit, which has come to be seen as the purpose of research and its primary incentive, she deplored. To call science a human right is to insist that its supply and direction, just as for healthcare and education, cannot be left up to market forces. She also cautioned against 'misinterpreting the IP rules negotiated in trade circles as reflecting any kind of human rights consensus'. The international IP regime is often in tension with human rights, she said. Broad exceptions to and limitations on patents and copyright continue to be 'extremely sensible'. The current goal of the international trade system is not to promote human rights but to secure advantage for IP exporting countries, she said.

Privatisation of University Research a Challenge

One of the current challenges to the right to science is the trend to privatise university research, she said, mentioning the Bayh-Dole model, which she said has been 'widely criticised' in the United States but is 'still increasingly being imitated abroad'. 'A legislation which obliges its universities to patent their researchers' discoveries undermines and violates both the obligation to cultivate scientific and technological research as a public good, and violates academic freedom by interfering with the universities' own determination on how to conduct and reward research', according to Shaver. The area of copyright law also reveals urgent conflicts, she said, between the privatisation of knowledge and the right to science. 'We finally have the technological tools at our disposal to end the book famine that has traditionally plagued higher education and research in developing countries," she said. "We need open access policies to remove the final copyright barriers'. She mentioned the recently agreed-upon Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, as the first instance that WIPO has developed an agreement not around increasing IP protection but which focusses on exceptions and limitations to promote human rights (*IPW*, WIPO, 26 June 2013).

WIPO member countries are also currently discussing a possible instrument to provide exceptions and limitations to copyright for libraries and archives, as well as for educational, teaching and research institutions. Margaret Vitullo, director of academic and professional affairs for the American Sociological Association, said 'scientific freedom starts with scientists, but it spans all the way to the general public. Without scientific freedom, science is not produced, nor communicated, and thus the rights of the general public to access science is impinged.' Scientific freedom and access are tightly linked concepts, she said, adding that it is understood that with scientific freedom comes scientific responsibility." Saez (2013d)

See also, on the same theme of IPRs becoming, potentially, an obstacle to the development (in this case, of efficient green technology), WTO-TRIPS (2014).

What about the possibility that a viable definition of '*sui generis*' IPRs could be defined?

First, a purely technical card that poses a purely technical problem having strong relevance for any future sort of '*sui generis*' IPRs on GR:

6.b [TMK and modern pharmacological synthesis; card-artemisinin (2012)]

- "SYNTHETIC BIOLOGY: LIVELIHOODS AND BIODIVERSITY: ARTEMISININ

Artemisinin, the key ingredient in the world's most effective anti-malarial drug, is extracted from *Artemisia annua,* commonly known as sweet wormwood. Today the pharmaceutical industry sources natural artemisinin from thousands of small farmers in Asia and Africa.

Synthetic biologists at California-based Amyris, Inc. have inserted an engineered metabolic pathway in microbes to produce artemisinic acid, a precursor to artemisinin production. Pharmaceutical giant Sanofi-aventis is now attempting to scale up production of artemisinic acid in commercial fermentation tanks.

At the present time 80% of the Artemisia/artemisinin is produced in China, 15% in Vietnam and the reminder in Kenya, Tanzania, Uganda, Madagascar and a small amount in India. Trials of Artemisia are being grown in Zimbabwe, South Africa and Nigeria. In 2011, the average price of artemisinin was around US$550/kg. ...

This case study illustrates developments in synthetic biology that could disrupt the livelihoods of thousands of small farmers who cultivate Artemisia for the plant's anti-malarial compounds. These developments impact the sustainable use of biodiversity and fair and equitable sharing of benefits from the genetic resources that produce natural plant products. If biosynthesis of artemisinin can be successfully scaled up, the pharmaceutical industry will source future supplies of artemisinin from a handful of microbial cell factories instead of farmers in Asia and Africa. Artemisinin is just one example of a raw material that may be affected; it is conservatively estimated that at least 50% of today's commercial pharmaceutical compounds are derived from plants, animals and microorganisms. ... No inter-governmental body is addressing the potential impacts of synthetic biology on the conservation and use of biodiversity and on the livelihoods of those who depend on agricultural export commodities (including high-value flavors, fragrances, essential oils, etc). ...

Trial batches could be available from drug manufacturer Sanofi by the end of 2012. ... Because of the increased demand for artemisinin and the reinvigoration of anti-malaria campaigns, The Royal Tropical Institute of the Netherlands predicted in 2006 that Artemisia cultivation would grow to approximately 5000 smallholders and 500 larger-scale farmers. ...
In 2006, Professor Jay Keasling of the University of California-Berkeley and collaborators announced they had successfully engineered a yeast strain to produce artemisinic acid, a precursor to the production of artemisinin. Supported by a $42.5 million grant from the Bill & Melinda Gates Foundation, the researchers achieved the complex feat of engineering the metabolic pathway, which comprised 12 new synthetic genetic parts. Inserted into yeast, the engineered pathway makes the yeast produce artemisinic acid, and a chemical process is then used to convert artemisinic acid to artemisinin. In 2008, Amyris granted a royalty-free license for its synthetic yeast to Sanofi-aventis for the manufacture and commercialization of artemisinin-based drugs, with a goal of market availability by 2013.

artemisinin (2012), passim

The importance of this information for the GRTKF program, that tends to reach an agreement on some sort of complicate, rather obscure '*sui generis*' IPRs rules for 'prior knowledge' on medical properties on local plants (see preceding Section - 6.a), lies clearly in the sentence:

"If biosynthesis of artemisinin can be successfully scaled up, the pharmaceutical industry will source future supplies of artemisinin from a handful of microbial cell factories instead of farmers in Asia and Africa. Artemisinin is just one example of a raw material that may be affected; it is conservatively estimated that at least 50% of today's commercial pharmaceutical compounds are derived from plants, animals and microorganisms. Seven of the ten largest pharmaceutical companies are now partnering with synthetic biology companies to develop synthetic biology production routes for pharmaceuticals previously processed from botanical sources."

There is clearly no way to affirm 'prior knowledge' on synthetic molecules whose starting skeleton can be, structurally, far away from the final, active form. And, clearly, no previous '*sui generis*' IPRs can resolve the potential crisis created, at least in part, by the WIPO's solicited dependence of indigenous communities and local populations on some sort of IPRs:

"No inter-governmental body is addressing the potential impacts of synthetic biology on the conservation and use of biodiversity and on the livelihoods of those who depend on agricultural export commodities (including high-value flavors, fragrances, essential oils, etc)".

There is therefore a pending danger on the utility, and desirability and permanence, of any sort (be it 'normal' or '*sui generis*') of IPRs on GR; but a kind of more general dissatisfaction with the present IPRs regimes is already here:

"A proposal has been made to initiate a debate on 'patent quality' at the WIPO. The expression 'patent quality' ambiguously alludes to a growing problem, faced in both developed and developing countries alike: the overwhelming majority of patents are applied for and granted over incremental developments on existing technologies. Although the patent system is supposed to reward inventiveness, in many cases patents cover minor improvements or trivial ideas. Although the intrinsic value of the technology protected under such patents is low, they are often strategically used to generate or keep monopolistic positions that affect competitors and consumers. ...

An investigation conducted by the European Commission on the pharmaceutical industry, for instance, concluded that:

- filing numerous patent applications for the same medicine (forming so called 'patent clusters' or 'patent thickets') is a common practice to delay or block the market entry of generic medicines
- individual medicines are protected by up to nearly 100 product-specific patent families, which can lead to up to 1,300 patents and/or pending patent applications across the Member States

- patent litigation cases increased by a factor of four between 2000 and 2007; generic companies prevailed in 62% of 149 litigated cases that lasted from six months to more than six years
- European governments and consumers paid around 3 billion Euros in excess between 2000 and 2007 (in relation to 219 drugs) due to abuses in the exercise of patent rights."
Correa (2012), passim

How, strange it therefore seems, on the basis of these considerations the effort by Wipo to impose, generalize and improve some overall IPRs regimes to UDCountries, under the pretext of their being a necessary condition for development!

We would have therefore liked to take our very patient (and surely very tired!) readers/fellow-travellers for a last tentative foray into the Maze, just to see if those warning signs of fading for the universal IPRs paradigm could be seen. It is however, if not utterly impossible, at least very difficult to find in the Maze traces at least of this trend, suggesting a future end for the IPRs regimes and at the same time suggesting new paths to intellectual creation. The Maze, namely the space occupied by the official and personal productions born out of the GRTKF program, seems a rather unhealthy space for the development of even a mild form of critical thinking.

Therefore, much as we would have preferred to stay inside the Maze (this was, more or less, the pledge we made with those willing to ask us to be their 'guide'), we had to try and explore a number of other less frequented intellectual spaces, where new ideas and some tentative experiments are slowly and uncertainly developing. Where perhaps the atmosphere is clearer than inside the Maze, free new tentative ideas are beginning to float around, and you can feel sometimes a freshness that the 'money expectation smell' makes it impossible to sniff inside the Maze.

In this wider space, there are indeed feeble signs of different trends of thought, which seem to start growing and where some emphasis on active and local initiatives - instead of '*sui* generis' IPRs claims - dominates:

- as for instance in:

"Avec quel type de développement rural nous faut-il renouer, comment s'y prendre et avec qui? Certaines communautés africaines ont commencé à répondre à ces questions. Elles proposent des actions innovantes, locales ou régionales, qui font leur preuve et sont productives. Au croisement des cultures jusqu'alors ignorées, de nouveaux modes de développement naissent. L'auteur décrit quelques-unes de ces initiatives africaines, respectueuses de l'identité des populations rurales. Ces expériences illustrent une démarche où l'innovation technique n'est plus centrale mais s'insère dans un dispositif plus global. Un autre type de développement se dessine. Le dialogue, la participation active des communautés concernées et la prise en compte de tous les savoirs locaux en sont les principes."

Clavel (2011), Avant-propos

- or perhaps where 'authors that be' are willing (as we are) to distribute and share their production through channels (mainly under the form of e-books) which produce no royalties, but guarantee a large diffusion and can even allow third parties to interfere and to modify (hopefully, to improve) their text. Channels like, for instance, 'Creative Commons':

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After so many pages and words on so many claims, so many accusations of 'piracy', so many rigid affirmations of **property** of any sort (be it ideas, plants, trees, minerals, land, words, spells, proverbs, yoga postures, recipes, ...), it is such a refreshing moment to find that someone somewhere wants to SHARE! and not only to SELL!

- or perhaps in the relatively recent 'medicines patent pools':

MEDICINES PATENT POOL : le Medicines Patent Pool est une organisation soutenue par les Nations Unies et dont le modèle économique est axé sur les besoins de santé publique. Sa mission est de faire baisser le prix des traitements contre le VIH et de faciliter la mise au point de médicaments adaptés aux besoins des pays en développement, tels que les combinaisons à dose fixe ou les formulations pédiatriques. Il a été fondé en 2010, à la demande de la communauté internationale, grâce à une initiative et le

financement d¹UNITAID (initiative mondiale qui investit sur les marchés des médicaments et des tests diagnostiques pour que les pays en développement puissent accéder à des produits de qualité ...). Le Medicines Patent Pool a été reconnu par l¹Organisation mondiale de la santé, la Réunion de haut niveau sur le sida (2011) et le G8 comme une initiative innovante et prometteuse pour améliorer l¹accès aux médicaments anti-VIH.
(POUR PLUS D¹INFORMATIONS, VEUILLEZ CONTACTER :
Kaitlin Mara kmara@medicinespatentpool.org +41 79 825 4786
Richard Warren rwarren@medicinespatentpool.org +41 76 455 18 47
from: e-med@healthnet.org; e-med, Vol 10, Parution 105)

We do not ignore, and we do not want to ignore, of course - we are not that naive! - that a large part at least of the distrust and claiming for rights, from 'Theirs' part, descends and depends on the centuries of colonial and imperialistic 'Western' policy of piracy against 'Them'. Our only concern is however: jumping blindly into WIPO's GRTKF monetary space, embracing the universal IPRs paradigms, is really the best way for 'Them' to become **independent**? is it not, on the contrary, the best way for 'Them' to become more and more tangled into a new, less visible but equally inhuman and persistent, **dependence**?

Let us finish, on a much lighter tone, by a very tasty cake that you will have no chance of finding in the Maze:

"IGP (Indication Géographique Protégée):

Les défenseurs de la Zuger Kirschtorte veulent une IGP pour cette douceur créée en 1915 [modestly, the recipe for this cake is not supposed to be 'ancestral'!]. Le gâteau au kirsch de Zoug ne devrait être produit que dans le canton et exclusivement avec du kirsch local ou provenant du Rigi."
20 Minutes (Ge), July 19, 2013,

from where it is clear that the claim to some respect for a 'true' Zuger Kirschtorte (a truly delicious Torte!) does not imply its being defended against any other 'Kirschtorte' in the world by a suitable IPR or IGP! Only that you should not call it 'Zuger' if it is produced outside the Zoug canton, and - if you are producing it inside the canton - that you should exclusively use the local kirsch (cherry's alcohol). Bu this concerns only the industrial, commercial production of the cake! In your kitchen, you can try with slivovitz or cognac or vodka...; you can also try and improve it and share your experience with your friends: no IGP will ever stop you! It is such a kind, non aggressive way to defend a sweet component of their CE heritage!

If only it could be, that this simple 'kirsch-cake example' were a lesson to those who pretend to deserve, or to impose, some sort of *'sui generis'* IPRs on 'yoga postures', for instance! or on 'proverbs'! or on 'rituals'!

(this potential and inevitable 'crystallization' of TK is one of the novel and powerful arguments developed by Manuela Carneiro da Cunha in Pimentel (2003) ['engessar esse modo de conhecimento'] and by Rahmatian (2009) ['creative movements are frozen']).

Even if we see no clear-cut signs of a conscious, intelligently accepted, favourably welcomed paradigm change, a small song is perhaps already ringing around (even in the Maze?):

"... Your old road is
Rapidly agin'
Please get out of the new one
If you can't lend your hand
For the times they are a-changin'

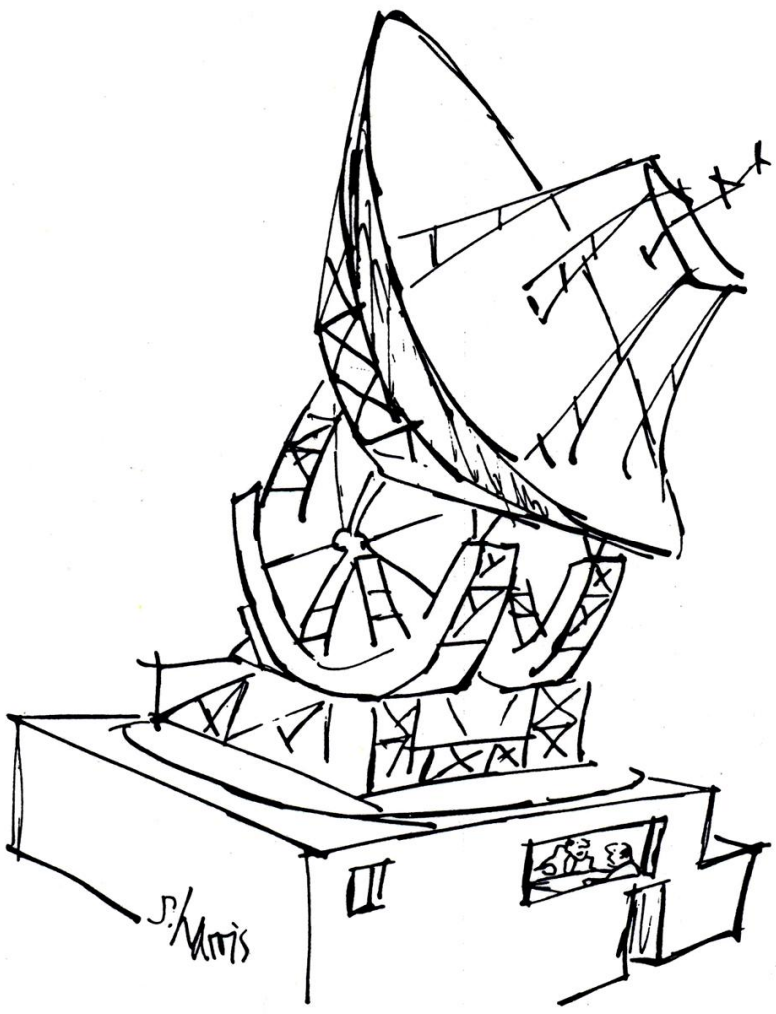
For the times they are a-changin'."

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add 6.b Carneiro (2009)
Drompt (2014)

Chapter 7

WE TOO, WE WOULD LIKE, FROM OUR @READERS/@FELLOW-TRAVELLERS, 'AN IMMEDIATE ANSWER'!



"As I understand it, they want an immediate answer. Only trouble is the message was sent out 3 million years ago."

Sidney Harris

Chapter 7 - Conclusions

Dear readers/fellow-travellers: how could you ask your faithful Guide to help you, and reach with you any sort of Conclusions about the Maze and its content and dangers, and the way to deal with them, when more than 10 years after the beginning of the expensive WIPO GRTKF activities and meetings the whole status of the project is still in a clearly embryonary phase?

WIPO programs and creative actions have been actively wandering during this time, with at least a prudent and limited aim: **'the rectification of names':**

"April 29, 2013

IGC 24 Update: Negotiators Advance on Core Issues Related to Traditional Knowledge

A meeting of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) from April 22 to 26, 2013 made good progress on key issues on its agenda. Discussions concluded with an improved draft text of an international legal instrument on intellectual property and traditional knowledge which will be submitted to the September 2013 session of the WIPO General Assembly. The General Assembly will take stock of progress made and decide on convening a diplomatic conference.

The IGC session was marked by intense substantive examination of four fundamental issues: defining 'traditional knowledge, identifying the beneficiaries of protection, framing the scope of rights and carving out appropriate exceptions and limitations. While welcoming progress in the discussions, delegates – both member states and observers – recognized the complexity of the issues.

The session, chaired by Ambassador Wayne McCook of Jamaica, was preceded by a three-day Indigenous Expert Workshop, co-organized by the WIPO Secretariat and the United Nations Permanent Forum on Indigenous Issues."

How could we criticize this approach, the one that gives pre-eminence to the 'rectification of names' with respect to 'the definition of further, urgent activities', in a Maze where empty 'mantras' occupy most of the available space? We have been told of its importance by Confucius, at least 2500 years ago (but perhaps no one took notice 2500 years ago, as well as now):

子路曰：「衛君待子而為政，子將奚先？」子曰：「必也正名乎！」子路曰：「有是哉，子之迂也！奚其正？」子曰：「野哉由也！君子於其所不知，蓋闕如也。名不正，則言不順；言不順，則事不成；事不成，則禮樂不興；禮樂不興，則刑罰不中；刑罰不中，則民無所措手足。故君子名之必可言也，言之必可行也。君子於其言，無所苟而已矣。」

"Zilu said: 'The ruler of Wei has been waiting for you, in order with you to administer the government. What will you consider the first thing to be done?' - the Master replied: 'What is necessary is to rectify names'. 'So, indeed!' said Zilu, 'You are wide of the mark! Why must there be such rectification?' - the Master said: 'How uncultivated are you, You! A superior man, in regard to what he does not know, shows a cautious

reserve. If names be not correct, language is not in accordance with the truth of things. If language be not in accordance with the truth of things, affairs cannot be carried on to success. When affairs cannot be carried on to success, proprieties and music will not flourish. When proprieties and music do not flourish, punishments will not be properly awarded. When punishments are not properly awarded, the people do not know how to move hand or foot. Therefore a superior man considers it necessary that the names he uses may be spoken appropriately, and also that what he speaks may be carried out appropriately. What the superior man requires, is just that in his words there may be nothing incorrect' ".
Confucius, *Analects* 13.3 (translation by J.Legge)

And so, with everybody busy at 'rectifying names', new editions of the 'Glossary' are at least twice a year necessary:

WIPO-TK-Glossary (2013): Glossary of key terms related to IP and genetic resources, TK and T cultural expressions. Geneva: WIPO, January 11, 2013,

and the same for the 'Consolidated Document':

WIPO-Consolidated-rev.2-8-2-'13: Consolidated document relating to intellectual property and genetic resources, traditional knowledge and folklore (document prepared by the secretariat for WIPO/GRTKF/IC/23/rev. 2). Geneva: WIPO, February 8, 2013,

two documents that have been faithfully and rigorously published after each GRTKF meeting.

The point is, of course, of importance: indeed, a need should be felt always to start from 'words' (this is simple) to reach 'meanings' (this seems to have been, and still to be, particularly difficult in this context); Socrates would have liked to go further, from 'logos' to 'alétheia' - from 'words' to 'truth':

- "Socrates to Callicles: Give ear then, as they say, to a right fine story [logos], which you will regard as a fable [mythos], I fancy, but I, has an actual account [logos]; for what I am about to tell you I mean to offer as the truth."
Plato, Gorgias, 523a; Loeb ed., p.519

but WIPO doesn't seem to have such an ambitious aim, just only a vastly minor one: to go from 'words' to 'conventionally, but universally accepted, meanings'; or, shall we say, 'consolidated meanings'?

Therefore, in reaching the end of our exploratory trip throughout the Maze, we cannot reach any clear-cut conclusion about the meaning, the interest, the aims, the success, the feasibility of the GRTKF program - that could require WIPO quite a number of future GRTKF IC meetings.

But we can look around ourselves, and see if something that is part of our everyday life contains elements, familiar things, that could suggest a need for a similar program on 'respect, protection and promotion' of 'our' TK (be it through IPRs or '*sui generis*' variants) in 'Our' own world.

This is the reason why, after having explored the huge space spanned by the Maze, we come back for a moment to our old Switzerland:

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7. [Swiss inventory of living traditions; card-Switzerland (2012)

Swiss Inventory of Living Traditions

All traditions that appear in the Inventory share the following three features:

- they are still practiced in Switzerland.
- they are an integral part of our cultural diversity and identity.
- they change and evolve.

It is precisely these three aspects that enable living traditions (or intangible cultural heritage, as they are also known) to connect one generation to next generations and to foster exchange.

Background

Living traditions are our intangible cultural heritage. To stress the importance it gives to these traditions, Switzerland acceded to the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (16 October 2008). In doing so, Switzerland pledged to compile and periodically update an inventory of the living traditions found on its territory.

Aims

The 'Inventory of Living Traditions in Switzerland' seeks to be representative of the intangible cultural heritage found across the country. It helps to:

- make the public more aware of the importance of practising and passing on living traditions;
- generate greater recognition for the bearers and practitioners of living traditions;
- lay the groundwork for further initiatives and partnerships that seek to uphold the practice of living traditions.

Procedure

The federal authorities and the cantons shared the inventorying responsibilities. While the cantons oversaw the content (identifying and documenting living traditions in their territory), the federal authorities acted as coordinator. The selection procedure for the first edition of the Inventory (2011/2012) was as follows:

1. Each canton collected suggestions for traditions that were deemed suitable for inclusion.
2. A committee made up of staff from the cantonal offices for culture, federal representatives and assorted experts compiled a shortlist of candidates for inclusion on the inventory and submitted their choice to the cantons for approval.
3. In autumn 2012, the Confederation published the 'Inventory of Living Traditions in Switzerland' on a designated website: www.living-traditions.ch.

Daniel Vitali, Contact: Swiss Federal Office of Culture, Section culture and society, Hallwylstrasse 15, 3003 Bern

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7. [Swiss inventory of living traditions; card-Switzerland (2012a)]

Tradition	Category	Canton
A		
Aarau Bachfischet	Social practices	AG
Abbeys of Vaud	Social practices	VD
Albanifest	Social practices	ZH
Alpine processions in Appenzell and Toggenburg	Social practices	AI, AR, SG
Älplerchilbi and Sennenchilbi (Alpine fairs)	Social practices	LU, NW, OW, SZ, UR
Amateur theatre in Central Switzerland	Performing arts	LU, NW, OW, SZ, UR, ZG
Animal husbandry and cow fighting	Knowledge concerning nature	VS
Anna Göldi	Social practices	GL
Appenzell humour and satire	Oral expressions	AI, AR
Art of découpage in the Pays d'Enhaut	Traditional craftsmanship	VD
Avalanche risk management	Knowledge concerning nature	VS
B		
Basel Autumn Fair	Social practices	BS
Basel drumming	Performing arts	BS
Basler Fasnacht	Social practices	BS
Bears in Bern	Social practices	BE
Bechtelistag Frauenfeld	Social practices	TG
Belle Epoque excursions in the Lake Geneva region	Social practices	GE, VD, VS
Bénichon	Social practices	FR
Beromünster Ascension Day procession	Social practices	LU
Bikers' meeting in Hauenstein	Social practices	SO
Bilingualism in Biel/Bienne	Oral expressions	BE
Bochselnacht	Social practices	TG
Botany in Geneva and the «marronnier de la Treille»	Knowledge concerning nature	GE
Brother Klaus festival	Social practices	OW

.....

There is no talking here of Swiss TK 'inventions' (you will remember from Chapter 1 that only 'inventions' - and not 'discoveries' - can be granted a patent and so, gain some money through IPRs), but only, very modestly, of a Swiss 'inventory' where Swiss 'living traditions' are listed, offered to everyone to enjoy and use, incrementing at the same time the local tourism.

(Our faithful, if tired, fellow-travellers will have noticed that even in the Swiss inventories you can find new 'mantras' - for instance, 'the intangible cultural heritage', where 'intangible' plays the role customarily attributed to 'ancestral'; 'mantras' are indeed necessary as much to 'Our' rhetoric than to 'Theirs'!)

- the hunting gost of 'Invented Traditions'

As many of the 'intangible' Swiss traditions can be shown to be quite recent (see for instance Frisch (1971) for the founding myths on the origins of the Confoederatio Helvetica), and are therefore 'invented traditions' in the sense of Hobsbawm, they offer us an easy path to explore in the Maze the large, and ever growing space, occupied by them. But first, a few clarifying words on their meaning and use.

Hobsbawm sentence: "Students of peasant movements know that a village's claim to some common land or right 'by custom from time immemorial' often expresses not a historical fact, but the balance of forces in the constant struggle of village against lords or against other villages" helps us in discriminating 'invented traditions', sometimes, from 'mantras'. We have defined 'mantras' as essentially empty shells, and therefore of only rhetorical value; but 'invented traditions' can correspond to quite well defined - socially and politically - historical facts and situations, cloaked by convenience under a historical past:

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7. [the invention of tradition; card-Hobsbawm (1983)]

"Nothing appears more ancient, and linked to an immemorial past, than the pageantry which surrounds British monarchy in its public ceremonial manifestations. Yet, as a chapter in this book establishes, it its modern form it is the product of the late nineteenth and twentieth centuries. 'Traditions' which appear or claim to be old are often quite recent in origin and sometimes invented. ...

The term 'invented tradition' is used in a broad, but not imprecise sense. It includes both 'traditions' actually invented, constructed and formally instituted and those emerging in a less easily traceable manner within a brief and dateable period - a matter of a few years perhaps - and establishing themselves with great rapidity. ...

'Invented tradition' is taken to mean a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. In fact, when possible, they normally attempt to establish continuity with a suitable historical past. ...

'Tradition' in this sense must be distinguished clearly from 'custom', which dominates so-called 'traditional' societies. The objet and characteristic of 'traditions', including 'invented ones', is invariance. The past, real or invented, to which they refer imposed fixed (normally normalized) practices, such as repetition. 'Custom' in traditional society has the double function of motor and fly-wheel. It does not preclude innovation and change up to a point. ...

Students of peasant movements know that a village's claim to some common land or right 'by custom from time immemorial' often expresses not a historical fact, bur the balance of forces in the constant struggle of village against lords or against other villages. ...

A second, less important, distinction that must be made is between 'tradition' in our sense and convention or routine, which has no significant ritual or symbolic function as such, though it may acquire it incidentally. ...

Such networks of convention and routine are not 'invented traditions' since their functions, and therefore their justifications, are technical rather than ideological (in Marxian terms they belong to 'base' rather than 'superstructure'). ...

The invented traditions seem to belong to three overlapping types: a) those establishing or symbolizing social cohesion or the membership of groups, real or artificial communities, b) those establishing or legitimizing institutions, status or relations of authority, and c) those whose main purpose was socialization, the inculcation of beliefs, value systems and conventions of behaviour."

Hobsbawm (1983), passim

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where there are sentences to meditate on, for all concerned with decisions on TK:

"The invented traditions seem to belong to three overlapping types: a) those establishing or symbolizing social cohesion or the membership of groups, real or artificial communities, b) those establishing or legitimizing institutions, status or relations of authority, and c) those whose main purpose was socialization, the inculcation of beliefs, value systems and conventions of behaviour."

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7. [the invention of tradition; card-Hobsbawm (1983a)]

"Once we are aware how commonly traditions are invented, it can easily be discovered that one period which saw them spring up with particular assiduity was in he thirty or forty years before the first world war. One hesitates to say 'with greater assiduity' than at other times, since there is no way of making realistic quantitative comparisons. Nevertheless, the creation of traditions was enthusiastically practised in numerous countries and for various purposes, and this mass-generation of traditions is the subject of this chapter. ...

Quite new, or old but dramatically transformed, social groups, environments and social contexts called for new devices to ensure or express social cohesion and identity and to structure social relations. ...

In terms of the invention of tradition, three major innovations are particularly relevant.

The first was the development of a secular equivalent of the church - primary education, imbued with revolutionary and republican principles and content, and conducted by the secular equivalent of the priesthood - or perhaps, given their poverty, the friars - the 'instituteurs'. ...

The second was the invention of public ceremonies. The most important of these, Bastille Day, can be exactly dated in 1880. It combined official and unofficial demonstrations and popular festivities - fireworks, dancing in the streets - in an annual assertion of France as the nation of 1789, in which ever French man, woman and child could take part. ...

The third was the mass production of public monuments. ... The entrepreneurs catering for this marked provided choices suitable for the purses of every Republican commune from the poorest upwards, ranging from modest busts of Marianne, in various sizes, through full-figure statues of varying dimensions ...

Paradoxically, the most democratic and, both territorially and constitutionally, one of the more clearly defined nations faced a problem of national identity in some respect similar to imperial Germany. The basic political problem of the U.S.A. , once secession had been eliminated, was how to assimilate a heterogeneous mass - towards the end of our period, an almost unmanageable influx - of people who were Americans not by birth but by immigration. Americans had to be made. The 'invented traditions' of the U.S.A. in this period were primarily designed to achieve this object. On the one hand the immigrants were encouraged to accept rituals commemorating the history of the nation - the Revolution and its founding fathers (the 4th of July) and the Protestant Anglo-Saxon tradition (Thanksgiving Day) - as indeed they did, since these now became holidays and occasions for public and private festivities. ...

The final aspect is the relation between 'invention' and 'spontaneous generation', planning and growth. ... 'Invented traditions' have significant social and political functions, and would neither come into existence nor establish themselves if they could not acquire them.

Hobsbawm (1983a), passim

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7. [the invention of tradition; card-Ranger (1983)]

"The 1870s, 1880s and 1890s were the time of a great flowering of European invented tradition - ecclesiastical, educational, military, republican, monarchical. They were also the time of the European rush into Africa. There were many and complex connections between the two processes. The concept of Empire was central to the process of inventing tradition within Europe itself, but the African empires came so late in the day that they demonstrated the effects rather than the causes of European invented tradition. Deployed in Africa, however, the new traditions took on a peculiar character, distinguishing them from both their European and Asian Imperial forms.

By contrast to India many parts of Africa became colonies of white settlement. This meant that the settlers had to define themselves as natural and undisputed masters of vast numbers of Africans. They drew upon European invented traditions both to define and to justify their roles, and also to provide models of subservience into which it was possible to draw Africans. In Africa, therefore, the whole apparatus of invented school and professional and regimental traditions became much more starkly a matter of command and control than it was within Europe itself. ...

The invented traditions imported from Europe not only provided whites with models of command but also offered many Africans models of 'modern' behaviour. The invented traditions of African societies - whether invented by the Europeans or by Africans themselves in response - distorted the past but became themselves realities thought which a good deal of colonial encounter was expressed.

The traditions that were invented in Europe in the nineteenth century were very unevenly carried into Africa. In the 1880s and 1890s many whites were arriving in southern Africa from Europe, Canada and Australia to work in the mines; very many Africans were being drawn into the labour migrant network. But European proletarian or artisanal invented traditions were not available to fit African workers unto their place in the labour hierarchy, still less to help them define as artisans or workers. Instead, the revived and invented rituals of craft unionism were used by white workers to exclude Africans from participation. ...

It was not the invented traditions of European workers and peasants, but those of gentlemen and professional men which were most important to whites in Africa, and which had the greatest impact upon blacks. ... By the 1880s and 1890s there was a surplus of neo-traditional capital in Europe waiting to be invested overseas. Production of men for service in the extended governing class of industrial democracy had been almost too successful. Younger sons, well-born orphans, the sons of the clergy had experienced the 'traditions' of the public school, the regiment, the university, but were not guaranteed secure advancement in British administrative hierarchies. Such men were deployed in Africa as soldiers, hunters, traders, store-keepers, concession-seekers, policemen, missionaries. ...

Steps were therefore taken to ensure that the military and administrative services in Africa were related to the dominant traditions."

Ranger (1983), passim

But 'invented traditions' can also become part of our everyday life just for fun, and not only because of their commercial and touristic exploitation, as the following quotation will show (even on small things you can cheat: even on 'la baguette parisienne' !):

"La baguette tradition: Le texte sur la baguette tradition, si chéri par les Parisiens, s'inscrit dans une réflexion sur la fabrication d'un passé imaginaire. Ce pain, qui a surgi il y a environs deux décennies dans toutes les boulangeries, porte en lui le goût, la couleur, la saveur, le bonheur, d'un passé fantasmé. Elle en opère la résurrection. Elle appartient au marché mondial de 'l'authentique' toujours recréé, toujours fabriqué. Et elle est probablement l'un des symptômes d'une époque dont l'avenir consiste à mettre en scène le passé d'où elle émerge, et où l'avenir ne peut être que la répétition de l'identique, maquillé en authentique."

R.Enthoven, Le Temps (Ge), April 13, 2013.

But, what we find by exploring the Maze are things - and related 'invented traditions' - that can be much more serious that the baguette's one. If we write and quote here at length about the 'invented traditions', it is because of the total lack - in the WIPO GRTKF program - of any trace of methodological considerations and exigency on the validity of the presumed TMK, TK, CE and R innumerable 'traditions' that were stimulated to surge by the program. When it is just enough to be (or only just to affirm being) a member of either an indigenous or a local community to ask for 'respect, protection and promotion' of your presumed TK, how can this unruly proliferation be avoided? The strict 'methodological guidelines' outlined by WHO for TMK (WHO, 2000) have never - we do not say 'enforced' or 'required' as they should - but not even been 'quoted' in WIPO GRTKF hundreds of papers, documents, 'consolidated' decisions as a unavoidable contraint for, at least, every TMK!

Let us start from these two cards from India:

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7. [TMK and Indian Library; card-Indian Digital Library Conference (2011)]

"International Conference concludes TKDL can prevent misappropriation and fuel innovation - New Delhi, March 24, 2011

Representatives from more than 35 countries discussed at an international conference here the potential of India's Traditional Knowledge Digital Library (TKDL) – a database documenting centuries-old traditional medicinal treatments – to be emulated in their countries and concluded that such a mechanism can fuel future innovation and benefit-sharing. There was widespread agreement about the value of TKDLs to protect against misappropriation of traditional knowledge (TK), as well as their potential in enabling further innovation, such as in the area of public health. Delegates attending the *International Conference on the Utilization of the Traditional Knowledge Digital Library as a Model for Protection of Traditional Knowledge*, co-organized by WIPO and India's Council of Scientific and Industrial Research (CSIR), March 22-24, 2011, heard from countries which are rich in TK, such as Ecuador, Indonesia, Kenya, Peru, Republic of Korea and Thailand.

Speakers agreed on the need to protect TK from misappropriation.

Closing the conference on behalf of the Director General of WIPO, Executive Director and Chief of Staff Naresh Prasad said the conference 'was extremely successful, fulfilling its objective to disseminate information about the TKDL as a model for the protection of TK'. Summarizing the spirit of discussions, he added that TK should also be shared and communities should participate and benefit.

On the way forward, Mr. Prasad said it was now up to WIPO member states to provide feedback to the WIPO secretariat on which direction to take and whether they wish the Secretariat to enter into an institutional arrangement with the CSIR to facilitate the sharing of the TKDL model with other countries. Describing the conference as a 'path-breaking event', Mr Prasad said 'It is up to member states to tell us if and how to proceed and where to take things from here'.

At the closing of the conference, Director of the TKDL V.K Gupta said 'We are happy that TKDL has been able to assert India's right against misappropriation'. He added that India is willing to share its experience with other countries, noting 'we do realize the value of TKDL knowledge lies in its utilization for creating new medicines which can make health care affordable. TKDL has proved to be a successful initiative, at the same time it is possible in the future that we may be able to create solutions which go beyond TKDL. In any case, one size does not fit all'.
He also pointed out that 'TKDL is not the only solution against the misappropriation of TK', noting 'we believe there are solutions beyond TKDL. We started TKDL to assert certain rights against biopiracy but this was not the only objective'. ...

In a statement to the conference WIPO Director General Francis Gurry said the TKDL is an excellent example of a technical platform which can work alongside legislative frameworks. India's TKDL could be a good model for others and that WIPO was ready to facilitate international collaboration for countries which were interested in establishing their own TKDLs."

Indian Digital Library Conference (2011), passim

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7. [TMK and Indian Library; card-Indian TKDL (2011)]

"India Launches Traditional Knowledge Digital Library (TKDL) to Protect Against Bio Piracy

TKDL is a collaborative venture between Council of Scientific and Industrial Research, Ministry of Science and Technology and Earth Sciences, and Department of AYUSH, Ministry of Health and Family Welfare, and a maiden Indian effort to prevent misappropriation of traditional knowledge belonging to India at International Patent Offices. TKDL has overcome the language and format barriers by scientifically converting and structuring the traditional medical knowledge of Ayurveda, Unani, Siddha and Yoga in 34 million A4 size pages of the ancient texts in languages such as Sanskrit, Hindi, Arabic, Persian, Urdu and Tamil into five international languages, namely, English, Japanese, French, German and Spanish, with the help of information technology tools and a novel classification system - Traditional Knowledge Resource Classification (TKRC). Today, India through TKDL is capable of protecting about 2.45 lakh [1 lakh = 100.000] of medicinal formulations similar to those of neem and turmeric. ... Considering the novelty, utility and its effectiveness in preventing the grant of wrong patents several countries and organizations have expressed their keenness in replicating the TKDL model for their own countries. World Intellectual Property Organization including the global community has recognized India's leadership in the area of Intellectual Property Rights and Traditional Knowledge. ... TKDL genesis dates back to the Indian effort on revocation of patent on wound healing properties of turmeric at the USPTO and anti-fungal properties of neem at EPO. ... The grant of these patents in United States and Europe were the cause of great national distress, since, every Indian felt that the knowledge that belonged to India was wrongfully taken away. Further, the patents would have conferred exclusive rights on the use of technology to the applicant of the patent in the country in which it was granted. ...

TKDL has overcome the language and format barriers by scientifically converting and structuring the available traditional medical knowledge in languages, namely, English, Japanese, French, German and Spanish, with the help of information technology tools and a novel classification system - Traditional Knowledge Resource Classification (TKRC). For classifying the Traditional Knowledge related subject matter under TKDL Project, Resource Classification a classification system i.e. Traditional Knowledge (TKRC) based on the structure of International Patent Classification (IPC) was created by India which consists of approx. 27,000 sub groups for Ayurveda, Unani, Siddha and Yoga. ...

TKDL is a proprietary and original database. TKDL is based on 148 books of Indian Systems of Medicine, which are available at a cost of Rs. 50,000. These books are the prior art and can be sourced by any individual/organisation at national/international level. TKDL acts as a bridge between these books and international patent examiners."

Aug 12, 2011, passim
Samir K. Brahmachari
Director General, Council of Scientific and Industrial Research and Secretary, Department of Scientific and Industrial Research, Govt. of India
www.washingtonbanglaradio.com/bangla-natok (last read, 27 March 2013)

You cannot but be appalled by this rhetorical, emphatic - let us say it openly: stupid - use of 'big numbers': "Scientifically converting and structuring the traditional medical knowledge of Ayurveda, Unani, Siddha and Yoga in 34 million A4 size pages of the ancient texts in languages such as Sanskrit, Hindi, Arabic, Persian, Urdu and Tamil into five international languages", ... "India through TKDL is capable of protecting about 2.45 lakh [245.000] of medicinal formulations".

You feel something like drunkenness in Mr Brahmachari's text, as he were drunk by his owns' words. How far are we from "Even though a speech be a thousand words, but made up of senseless words, one word of sense is better", of Dhammapada (VIII, 100)!

But will the TKDL have recorded, as TMK of ancient lore, "From both thine ears, from parts thereof, thine ear-ache, and the throbbing pain, - all malady that wrings your brow we charm away with this our spell, - so that consumption may depart forth from thine ears and from thy mouth - all malady that wrings your brow we charm away with this our spell", as claimed by Atharva Veda (IX, 8)?

But the worse, the definite association of categories of people (castes) to glory or to toil, did this wisdom find its place in the "34 million A4 size pages of ancient texts" ? Which more 'ancient text' than the Rg Veda could you quote? "All living creatures hath the Dawn awakened. One to high sway, one to exalted glory, one to pursue his gains, and one his labour." (Rg Veda, I, 113). What deeper wisdom, as they tell us always, could you find than that expressed in the Bhagavadgita? "The duties of Brahmanas, Kshatriyas, and Vaisyas, and of Sudras, too, O terror of your foes! are distinguished according to the qualities born of nature. Tranquility, restraint of the senses, penance, purity, forgiveness, straightforwardness, also knowledge, experience, and belief (in a future world), this is the natural duty of Brahmanas. Valor, glory, courage, dexterity, not slinking away from battle, gifts, exercise of lordly power, this is the natural duty of Kshatriyas. Agriculture, tending cattle, trade, (this) is the natural duty of Vaisyas. And the natural duty of Sudras, too, consists in service. (Every) man intent on his own respective duties obtains perfection." Bhagavadgita (a chapter of the Mahabharata, XVIII, 41-45)

Apart from asking for some sort of '*sui generis*' IP recognition of this ancestral and dangerous prejudice, and getting some money out of it, what should the TK world do of this trash?

And perhaps the "34 million A4 size pages of ancient texts" are cognitively equivalent to the "eight hundred thousand myriads Bodhisattvas, similar to the sand of the river Ganges", discussed by the Saddharma-Pundarika (XIV, 4)?

And perhaps the "34 million A4 size pages of ancient texts" should explain why selling of 'sesame seeds and salt' should be banned to Brahmins, as ordered by such a very 'ancient text' as the Mahabharata: "Under all circumstances a brahmin should exclude spirits, salt, sesame seeds, animals with manes, bulls, mead, and cooked food. Upon selling these a brahmin would go to the hell Naraka", (Mahabharata, 12-79,5 - Bishma)?

And did the so small, only ~200 A4 size pages of the methodological guidelines, suggested by WHO (WHO, 2000) for the safe use of herbs in TMK, find a small corner inside the '34 million A4 size pages' of TKDL?

We learn that M.Francis Gurry, WIPO's Director General, said that "TKDL

is an excellent example of a technical platform which can work alongside legislative frameworks". Was there really no diplomatic way of addressing the "34 million A4 size pages" and the "245.000 medicinal formulations" by something similar to, if perhaps milder than, "trash"?

But let us take a simple example, 'soma', of which the 'ancient texts' give only a scanty botanical definition: "[Indra] drankest the plant's milk which the mountains nourish", by the Rig Veda (III, 48):

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7. [Indian folklore and sagas; card-soma (2013)]

"Soma was a Vedic ritual drink of importance among the early Indo-Iranians, and the subsequent Vedic and greater Persian cultures. It is frequently mentioned in the Rigveda, whose Soma Mandala contains 114 hymns, many praising its energizing qualities. It is described as being prepared by extracting juice from the stalks of a certain plant. ...
The Rigveda calls the plant 'God for Gods' seemingly giving him precedence above Indra and the other Gods (Rg Veda 9.42).

There has been much speculation concerning what is most likely to have been the identity of the original plant. There is no solid consensus on the question, although some Western experts outside the Vedic and Avestan religious traditions now seem to favour a species of Ephedra, perhaps Ephedra sinica. ...

In the Vedas, the drink, and the plant refer to the same entity. Drinking Soma produces immortality (Amrita, RV 8.48.3). Indra and Agni are portrayed as consuming Soma in copious quantities. The consumption of Soma by human beings is well attested in Vedic ritual. The Rigveda (8.48.3) states: 'We have drunk Soma and become immortal; we have attained the light, the Gods discovered. Now what may foeman's malice do to harm us? ...

The Ninth Mandala of the Rigveda is known as the Soma Mandala. It consists entirely of hymns addressed to Soma Pavamana ('purified Soma'). The drink Soma was kept and distributed by the Gandharvas. The Rigveda associates the Sushoma, Arjikiya and other regions with Soma (e.g. 8.7.29; 8.64.10-11). Sharyanavat was possibly the name of a pond or lake on the banks of which Soma could be found. It is described as 'green-tinted' and 'bright-shining' in the RigVeda (RV 9.42.1 and 9.61.17).

The plant is often described as growing in the mountains, notably Mount Mūjavant. It has long stalks, and is of yellow or tawny (hari) colour. The drink is prepared by priests pounding the plants with stones. The juice so gathered is filtered through lamb's wool, and mixed with other ingredients (including cow milk) before it is drunk. It is said to 'roar'. It is said to be the bringer of the gods. Later, knowledge of the ingredient was lost altogether, and Indian ritual reflects this, in expiatory prayers apologizing to the gods for the use of a substitute plant (somalataa, e.g. the pūtīka) because Soma had become unavailable. ...

There has been much speculation as to the original Proto-Indo-Iranian Sauma plant. It was generally assumed to be entheogenic, based on RV 8.48 cited above. Many descriptions of Soma are associated with excitation. Soma is associated with the warrior-god Indra, and has been drunk by him before his battle with Vṛtra. ...

Candidates that have been suggested include honey, and fly agaric (Amanita muscaria), which was widely used among Siberian shamans for its entheogenic properties. Several texts like the Atharvaveda extol the medicinal properties of Soma and he is regarded as the king of medicinal herbs (and also of the Brahmana class). A number of proposals were made, including ... fly-agaric mushroom, Amanita muscaria, as the likely candidate."

soma (2013), passim

You see that no one knows, today, what that plant whose 'milk' the Indian Gods drank - and that was essential for every Brahminic ritual - in reality was. The hint on 'milk' let to the tentative identification with the Greater Celandine (Chelidonium majus), but its hallucinogenic properties have discouraged this tentative proposal. Better to say: "We don't know"! But for sure the 'soma' will be in the TKDL, as an 'ancestral' magical and medical plant, and will be 'respected, protected and promoted' by the future WIPO's GRTKF programs against bio-piracy, as well as the other hundreds of 'names' of plants, animals and minerals picked up from the 'old texts' and located 'scientifically' in the TKDL, but whose ancient meanings and identifications with known plants, animals and minerals are irremediably lost.

The '34 million A4 size pages' of Mr Brahmachari are quite in agreement with the urge for patents of any form that seems to be sweeping nowadays India:

"In India, the National Innovation Foundation (NIF), asks pupils to submit original technological ideas and innovations', on how to make everyday life easier and more comfortable.

For their innovations, children will get a copy of the patent application filed in their respective names, apart from seeing the prototype, whenever feasible.

For example: One day, staring at the ceiling fan during a power cut, Usman wondered what would happen if the ceiling fan could be connected to a fan placed on the roof. That way, when the wind moves, the fan outside and the ceiling fan would in synergy. ... Patent filed under 2222/MUM/2012."
Honey Bee (2012), passim

As it was we think inevitable, this wave of 'invented traditions' has led to the masquerading of old customs, rituals and prejudices into modern, 'Western' forms that would make them more easily acceptable. We have recently seen a TV film, where we could follow the everyday life and teaching activities of an 'Ecole de feticeria' (School of Witchcraft) for girls, in the countryside of the Ivory Coast [TV5Monde: Belgique-France-Suisse; Ecole de Tanguelan, December 9, 2012]. Everything of a modern, efficient school was there: a Director (a woman), a number of Assistants (men and women), a refectory, dormitories, an 'entrance examination' (the candidate pupils had to show that, under suitable drum rhythms, they could enter trance), a curriculum on three years; and of course a 'fee', probably high enough for one of the candidates to confess that her family and even her relatives had to pledge for the payment.

Life, in this 'School' (could it be defined by WIPO as an example of bona fide Cultural Expression?), was absolutely normal; no textbooks, but morning trips to the surrounding forest; use of a white power or cream on the roots of old trees as a sign of respect for the forest's spirits; learning and singing of spells; dancing and singing in the afternoon; ... ; and, as a diploma at the end of the three years, a puppet representing your 'guardian spirit', to be kept jealously in your home if you wanted to continue the 'feiticeira' profession.

You could have felt that what was missing there, with respect to the practice of a standard 'Western' school, were the logical, scientific 'explanations' of what was taught, where the only things we saw were the 'presentations' of sacred objects to learn passively how to use, and of

ritual behaviours to learn passively how to copy. But a honest re-thinking about the 'Western' school years all of us went through led us to the sad conclusion that the difference, if one was there, was a very slight one.

We are now approaching the end of our trip through the Maze. While we think that we were able, at least partially, to undercover some of the most absurd and contradictory things that you can find into the official and recognized space of the Maze, we knew that we could not restore order and sanity into a space occupied by many items (last example, the TKDL) that have been welcomed there only by a mixture of 'Western' culpability, hypocrisy and perhaps economical interests.

We have tried to create a sort of vaccination (or antidote?) against 'mantras' (once the antidote works, it can be very useful against the 'mantras' in 'Our' lives!); we could however now slightly modify our definition of a 'mantra' (Chapter 0, where a 'mantra' is defined as an 'empty box') by stating that, in the Maze, there is sometimes something inside a 'mantra': just, and only, 'money'!

To us, sincerely, it is hard now to see where to look for alternatives to GRTKF; a few examples can perhaps bring some hope? see next cards:

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7. [privileges of literary property vs progress; card-Condorcet (1776)]

"Tout privilège est donc une gène imposée à la liberté, une restriction mise aux droits des autres citoyens; dans ce genre il est nuisible non seulement aux droits des autres qui veulent copier, mais aux droits de tous ceux qui veulent avoir des copies, et pour qui ce qui en augmente le prix est une injustice. L'intérêt public exige-t-il que les hommes fassent ce sacrifice? Telle est la question qu'il faut examiner; en d'autres termes, les privilèges sont-ils nécessaires, utiles ou nuisibles au progrès des lumières? ... Quand bien même il n'existerait pas de privilèges en librairie, Bacon n'en eût pas moins enseigné la route de la vérité dans les sciences; Képler, Galilée, Huyghens, Descartes, n'en eussent pas moins fait leurs découvertes; Newton n'en eût pas moins trouvé le système du monde; M.D'Alembert n'en eût pas moins résolu le problème de la précession des équinoxes."

Condorcet (1776), passim

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7. [TMK development without patents?; card-malaria]

"How Malawi's dominant ethnic group, the Chewa, view it? For us, malaria is a disease caused by a protozoan parasite transmitted by mosquito. For the Lake Malombe Chewa, malaria — which the locals call malungo, and lump together with other malaria-like illnesses — is a disease caused by mosquitoes and spirits and jealousy and hexes and bad weather and hard work and dirty water and rotten food, among other things. ...

Like intelligent design and other forms of magical thinking, these beliefs are not unrelated to actual shortcomings in the scientific explanations with which they compete. Every time mosquitoes bit Lake Malombe Chewa and they did not fall ill with malungo, their disbelief in the mosquito theory of malaria transmission strengthened. Ditto for every time they took an anti-malarial drug and it failed to work. If the drug didn't work, this meant that the malungo was not caused by mosquitoes. ...

It isn't that the Chewa villagers don't understand that destroying mosquito' larval habitats or sleeping under bed nets, or taking prophylactic drugs, or sealing up their houses, help prevent malaria. And it isn't that they aren't interested in preventing malaria. ...

It is that, as with people everywhere, there's little interest in fixes that are time-consuming or temporary, or that promise only — in their minds — marginal efficacy. Even if some malungo can be alleviated by people avoiding mosquito bites, they can't possibly avoid exposure to the weather, or to hard work, or to the envy of their neighbors."

Shah (2010), passim

"The Amerindians had tried the bark as a remedy to suppress shivering and, by extension, they came to use it in all sorts of febrile conditions (or agues). The first definite written account of the medicinal properties of the bark appears to be that by Fray Antonio de 1a Calancha, an Augustinian missionary who, in 1633, wrote an account of 'the fever tree' which 'grows in Loja, Peru, the bark of which when made into a powder and given as a beverage cures the tertian fevers'. He also describes its widespread use in Lima, the capital of Peru. ...

In the late eighteenth and early nineteenth centuries a number of chemists and pharmacists attempted to discover the active principle of the bark. ... As early as 1821, Pelletier and others began to manufacture quinine and, as the sulphate, it rapidly became known and used worldwide. Pelletier and Caventou did not patent their process but in a humanitarian gesture allowed it to be produced everywhere without licensing fees, and this helped greatly in its widespread use throughout the world. ...

It is now almost 400 years since the Jesuits in Peru identified the bark of the Cinchona, brought to them by the Amerindians, as having a specific febrifugal effect. At first there was the bark but no tree, and then the tree but no compound, then the substance quinine but no chemical structure or effective synthesis. Finally the parasite Plasmodium was identified and the facts were fitted together to form a coherent picture."

Lee (2002), passim

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7. [towards medical research without patents; card-Velásquez (2013)]

"Face à la cupidité des laboratoires pharmaceutiques, un projet de traité international vise à découpler le coût de la recherche et le prix des médicaments, afin de faciliter la découverte de remèdes efficaces et accessibles aux populations qui en ont le plus besoin.
Même lorsqu'elles ne sont pas solvables. Certains mécanismes permettent d'ores et déjà d¹orienter la recherche vers les maladies endémiques au Sud.

L¹industrie pharmaceutique? ... Si, auparavant, elle obtenait des brevets mérités pour de véritables inventions, 'Big Pharma', sous la pression de ses actionnaires, a dès lors consacré son énergie à créer de nouvelles pathologies et à inventer des brevets. Au prix, parfois, de la santé des patients qu'elle est censée protéger. ...

La logique du marché conduit l'industrie pharmaceutique à développer des médicaments qui traitent plus qu'ils ne guérissent, tels ceux destinés à combattre l'hypertension, le cholestérol, le sida et la majorité des maladies chroniques, dont les traitements doivent être pris à vie. De fait, un patient non guéri reste un consommateur permanent, assurant des bénéfices à l'industrie, tandis que les produits qui guérissent les patients tuent le marché. ...

Constatant l'échec des incitations actuelles - les brevets – à susciter suffisamment de R & D dans les secteurs privé comme public, le groupe d'experts propose aussi d'expérimenter des systèmes d¹innovation 'ouverts', ne reposant pas sur la propriété intellectuelle. Il mentionne toute une série d'innovations fondées sur le libre accès aux savoirs': cette expression définit les activités de recherche produisant des connaissances que l'on peut réutiliser librement, sans restriction légale ou contractuelle ni exclusivité.

En premier lieu, on trouve les plates-formes de recherche précompétitives, associées à des dispositifs de code ouvert (open source) et de libre accès. Toutes les équipes des universités, des institutions publiques et des laboratoires privés bénéficiant de subventions publiques pourraient mettre en commun leurs découvertes. Aujourd'hui, c'est loin d'être le cas: les recherches de bien des institutions sont vendues à l¹industrie privée, qui s'attribue parfois des brevets sur ces produits développés grâce à des fonds publics.

La publication ouverte des résultats faciliterait le transfert de technologies vers les pays en développement. L'Inde en offre un exemple avec le 'modèle en open source pour la découverte de médicaments' développé par son Conseil pour la recherche scientifique et industrielle, qui concentre ses efforts sur de nouvelles thérapies contre le paludisme, la tuberculose et la leishmaniose. ...

De leur côté, les communautés de brevets (patent pools) offrent à tous les acteurs d'un même domaine (par exemple, les chercheurs engagés dans la recherche de médicaments contre le VIH/sida) un accès équitable à tous les produits."

Velásquez (2013), passim

On 'open source' as a possibility to go ahead, with respect to both IPRs and '*sui generis*' IPRs, a few sentences by Jawell sound meaningful:

"Open source movement fuels uptake: The uptake and development of 3-D printing is also being fuelled by a dynamic open source movement. For example. the RepRap (short for replicating rapid prototyper) initiative, founded by Dr.Adrian Bowyer at the University of Bath, UK, in 2005, has produced a low-cost 3-D printer capable of printing most of its components. The project's designs, including the machine itelf, are released under a free software licence (the GNU General Public Licence). As the RepRap printer design is open, anyone can modify or improve, manifacture and sell it. Business analysts CSC note that the 'rate of innovation on the RepRap and its derivatives is accelerating faster than equivalent commercial 3-D printers' ."
Jewell (2013)

In contrast, and to point out the madness of 'Our' own social relations and of the ways in which they have been rigidified by 'law and order' relative to IPRs, let us read the perfectly legal, if stupid, conclusion by a U.S.A. judge, according to whom, when you receive a letter from someone, you are only the owner of the paper on which the letter is written, but not of the content of the letter, that is still owned (by the current IPRs laws) by the sender:

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7. [degeneration of IPR; card-Salinger vs Hamilton (1986)]

"One of the few interviews Salinger granted after achieving literary fame was prompted by the writer's indignation over the unauthorised publication in 1974 of a collection of short stories he had published over the years, but never intended to compile or reprint. 'Some stories, my property, have been stolen,' Mr. Salinger said. 'Someone's appropriated them. It's an illicit act. It's unfair. Suppose you had a coat you liked and somebody went into your closet and stole it. That's how I feel.'

As a matter of justice, surely Salinger was owed some the proceeds from the sale of this volume. Naturally Salinger sued, seeking a tidy sum in damages. Yet these were works he meant never to republish, so it's doubtful the prospect of lost profits was the source of his ire. ... Making copies of something is utterly unlike stealing a coat. When somebody steals your coat, you can't wear it any more. If somebody distributes copies of your stories, there's more for everyone. ... The only thing Salinger really lost was his jealously guarded sense of exclusive control over everything he ever had a hand in creating.

Whether or not this kind of loss counts as a real harm, whether there is a legitimate moral entitlement to this kind of exclusive and comprehensive control of one's creative work, is one of the great questions of our age. Given the all-too-successful legal and legislative efforts of Disney, the recording industry and artists like Salinger, the prevailing model of copyright has come to appear as yet one more way in which our political economy is rigged to protect privilege. This shift in perception can be explained by a bigger shift in our creative culture. The rise of the arts of the sample, the remix and the mash-up alongside the emergence of the open-source software movement has engendered a growing sense that creative work both draws from and adds to a common pool of shared culture.

This change in the mood and tools of the creative class has made Salinger's legal aggression against biographers, filmmakers and inferior writers seem less like charming New Hampshire get-off-my-lawn curmudgeonism and more like a contemptible failure of generosity. A decent man does not shoot at kids taking a shortcut across his back forty. But Salinger, again and again, lawyered up, aimed carefully, and fired."

www.economist.com/blogs/prospero/2011/01/copywrongs
(last read: August 25, 2013)

In this final fire-work of old and modern, of 'Ours' and 'Theirs' follies, read some of the examples collected by Lloyd, as well as an example of sublime, blind 'Western' arrogance, that can justify much of 'Their' sane mistrust against 'Our' world and its ideologies:

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7. [TK, magic arts and deception; card-Lloyd (1979)]

"But perhaps these claims [to heal diseases] are not true and it is men in search of a living who invent all these fancy tales about this particular disease and all the others too; attaching the responsibility for each of the different forms of the complaint to a god." (On the sacred disease, Hippocratic treatise, end of V Century B.C. - as quoted by LLoyd, 1979, p.17)

"When failure was unavoidable the belief in witchcraft provided a ready excuse. By informing their clients that they had been 'overlooked' or 'forspoken', the cunning men could imply that if only the disease had been natural they could have to cure it. Even the Catholic who held charming sessions at St James's 1664 was prepared to fall back on this." (K.Thomas: Religion and the decline of magic. London, 1971 - as quoted by LLoyd, 1979, p.17)

"I found that it was a quite belief among Azande that many of the practitioners are charlatans who make up any reply which they think will please their questioner, and whose sole inspiration is love of gain." (E.E.Evans-Pritchard: Witchcraft, oracles and magic among the Azande [an ethnic group of north Central Africa]. Oxford, 1937 - as quoted by Lloyd, 1979, p.15)

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7. [Western intellectual arrogance; card-Aubé (1945)]

"Les trois peuples qui ont porté successivement et se sont transmis l'un à l'autre le flambeau de la civilisation ont produit chacun un type admirable de guerrier dont ils sont fait le héros d'une épopée. C'est d'abord l'Inde qui enfanta Rama dont le Ramayana célèbre les exploits; puis, c'est la Grèce qui eut Achille dont Homère chanta la gloire dans l'Iliade, le poème le plus beau qui soit sorti de l'esprit humain, et en dernier lieu c'est la France qui produit Roland que notre Chanson présente au monde comme l'idéal du Chevalier chrétien, celui dont saint Louis offrira sur le trône le modèle achevé et qui porte toujours avant tout dans son coeur l'amour de Dieu et de sa patrie."

Aubé (1945), p.XXIII

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add:

La 'préqualification' OMS: origines, déploiement et impacts sur la disponibilité des antirétroviraux dans les pays du Sud.

"The purpose of this paper is double. First, we propose an analysis of the origins and conditions of the implementation of the WHO Prequalification of Medicines Program. Secondly, we offer a first set of elements from which to assess its impact on the supply and the availability of antiretroviral drugs in developing countries, using data from the Global Price Reporting Mechanism. In the first part, we present the origins of the program, its basic constituents, its scope and the initial difficulties encountered in its implementation. Then we present the list of WHO prequalified medicines and first lessons to be learned from its analysis. In the third part, we propose an assessment of its implementation ten years after its implementation, and its impact on the nature of antiretroviral drugs transactions."
Lantenois et al (2014), Résumé

"Au travers de l'analyse des origines et des conditions de la mise en place du programme de préqualification de l'Organisation mondiale de la santé (OMS), l'article de C. Lantenois et B. Coriat pointe l'importance qu'a pu avoir cette innovation institutionnelle dans le monde de la lutte contre le sida, comme dans l'univers des normes internationales de réglementation de la qualité des médicaments. Leur analyse des transactions sur les antirétroviraux (ARV) contribue également à mettre en évidence l'impact qu'a pu avoir ce programme sur l'offre et la disponibilité des médicaments dans les pays du Sud, et par conséquent sur le marché international de la production d'ARV. Comme le souligne l'article, le contexte de l'émergence de ce programme est une clé pour comprendre ce qui en a produit la nécessité au début des années 2000. Nous proposons ici de revenir sur ces éléments de contexte en considérant l'apparition du programme de préqualification comme un moment de reconfiguration des rapports de pouvoir au sein de luttes politiques, économiques et morales entre, d'une part, les tenants d'une application stricte, voire renforcée, de la propriété intellectuelle et, d'autre part, les défenseurs de l'accès aux médicaments et du recours aux médicaments génériques. Ces luttes ont pour enjeu le maintien des monopoles ou, au contraire, l'ouverture du marché des ARV à la concurrence dans les pays du Sud. Elles impliquent deux formes d'action collective, l'une organisée autour des positions des firmes pharmaceutiques implantées dans les pays riches et soutenues politiquement par leurs gouvernements, l'autre par les Organisations non gouvernementales (ONG) et les pays du Sud qui s'appuient sur la capacité de production de génériques des firmes implantées dans ces pays. Alors que la qualité de ces médicaments est mise en doute par les promoteurs de la propriété intellectuelle, l'OMS établit, avec son programme de préqualification, un dispositif de confiance (Karpik, 2007) au service de la promotion des génériques."
Krikoran (2014), (pp.101-102)

We are fully aware, notwithstanding our deeply felt flippancy against IPRs 'law and order', that we leave our readers with a last difficult and unanswered open question:

'why' (as opposed to 'when' and 'how') was this GRTKF project developed?

Tentative, and surely partial, answers:

- to enter into an important 'World Notoriety Stunt' for WIPO;

- to make a larger fraction of the world population **dependent** on the global monetary and financial world system, by creating at the same time the illusion that indigenous and local communities would become more **independent**;

- to make use of the immemorial rule: **'divide et impera'**

- to postpone the possible and somewhere desired death of IPRs through a necessary reform of the Intellectual Property regime, by enlarging the population bound economically to it

We would have liked to reach, and share with our patient readers, a more dialectic vision of the relation between 'We' and 'They', but we feel that we have not succeeded. Perhaps the present Guide is only a beginning? and reactions and criticisms and suggestions by our readers could help improving our general, if a bit limited and sometimes sectarian, outlook? and even WIPO, WHO and WTO could help us, if they only knew!

Here we take leave, and say here 'farewell' to our kind and patient readers and fellow/travellers: are you at least partially satisfied by our guide? do you feel deceived with respect to your initial hopes? do you feel now that you can continue your exploration of the Maze alone? are you willing to do it?

but please keep in your mind, everytime someone comes to you with a K (be it TK or any other shade of K) and asks for some suitable protocol of '*sui generis*' IPRs for it, that you should stubbornly repete:

"If someone believes something, we needn't always be able to answer the question 'why he believes it'; but if he knows something, then the question 'how does he know?' must be capable of being answered."
Wittgenstein (1969)

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add Conclusions Interview (2014)
Ketty
'Traditional Health Bill' (2003)
WHA67 (2014)
Why (2013)
WIPO-Report-ic-26

but please,
even if you are tired after this
- perhaps not so rewarding -
trip
and if you are still perplexed
('but what was all of this about?'),
write to us and tell us even the worse things
you think
of this Guide!
and of us!

good by!

anne and bruno:

deuxkamikaze2@yahoo.com

"I read somewhere of a shepherd who, when asked why he made, from within fairy rings, ritual observances to the moon to protect his flock, replied: I'd be a damn'fool it I didn't!' "

Dylan Thomas: Note, in Collected poems, 1934-1952. London: Dent, 1952. November 1952, p.vii.

THE END

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Acronyms

ABS	Access and Benefit Sharing
CBD	Convention on Biological Diversity
CE	Cultural Expressions
DTI	Department of Trade and Industry, Republic of South Africa
EC	European Community
EPO	European Patent Office
FAO	Food and Agriculture Organisation
GR	Genetic Resources
GRTK	Genetic Resources and Traditional Knowledge
GRTKF	Genetic Resources, Traditional Knowledge and Folklore
IGC	WIPO Intergovernmental Committee (on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore)
IKS	Indigenous Knowledge System(s)
ILS	Indigenous Law System(s)
IP	Intellectual Property
IPRs	Intellectual Property Rights
MDGs	Millennium Development Goals
PGR	Plant Genetic Resources
PTO	Patent and Trademark Office
TCE	Traditional Cultural Expressions
TCM	Traditional Chinese Medicine
TK	Traditional knowledge
TMK	Traditional Medical Knowledge
TRIPS	Trade Related Intellectual Property RightS
UNESCO	United Nations Educational, Scientific and Cultural Organization
USPTO	United States Patent and Trademark Office
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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